118-453

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~883~~. 552

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

THE BOARD OF HEALTH OF THE STATE OF LOUISIANA, AND THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 8, 1884.

SUPREME COURT OF THE UNITED STATES.

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No. 898.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

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THE BOARD OF HEALTH OF THE STATE OF LOUISIANA, AND THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 *Petition. Filed Nov. 8th,* 1882.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

MORGAN'S LOUISIANA AND TEXAS R. R. & S. S. Co.
vs.
THE BOARD OF HEALTH OF THE STATE OF LOUISIANA.

No. 7001. Div. "C," Civil District Court.

To the honorable the civil district court for the parish of Orleans:

The petition of Morgan's Louisiana & Texas Railroad and Steamship Company, incorporated under and by virtue of the laws of Louisiana, having its domicile in New Orleans, respectfully represents:

2 That it is the owner of the steamships New York, Algiers, Morgan City, Lone Star, Chalmette, Excelsior, Morgan, Whitney, Hutchinson, Hewes, Gressie, City of New York, Harlan, I. C. Harris, Aransas, Clinton, St. Mary, and others, plying between New Orleans and New York and between New Orleans and other ports in Texas, Mexico, and the West Indies, engaged in carrying passengers and freight between said ports.

Petitioner further represents that the Board of Health, a corporation under the laws of the State of Louisiana, having its domicile in New Orleans, asserts a right to collect a fee or charge of thirty dollars from each vessel owned by petitioner, every time said vessels pass the quarantine station, on their aforesaid trips, and a further fee or charge for each trip for what is called fumigation service; and said board claims that, to secure the payment of said charges, it has a lien on all of said vessels, for sums thus claimed by it, en-

3 titling it to seize & detain said vessels.

And petitioner further says that said defendant threatens to seize and detain its said vessels if the charges exacted by the said board be not paid; and petitioner believes and has good reasons to fear and does fear that if said defendants be not restrained by this honorable court the said defendants will seize and detain petitioner's vessels while engaged in commerce, to the detriment and irreparable injury of petitioner.

And petitioner avers that it is informed, and so alleges, that defendant bases its rights to collect the said charges or duties upon legislative enactments of the State of Louisiana, and especially upon an act of the Legislature of the State of Louisiana entitled "An act to fix and regulate quarantine charges," &c., approved the first day of July, 1882, and numbered sixty-nine of the acts of the

4 Legislature of this State for the year 1882, and which said act is herein copied at length in the words and figures following, to wit:

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That the resident physician of the quarantine station on the Mississippi river shall require for every inspection and granting

certificate the following fees and charges: For every ship, thirty dollars ($30); for every bark, twenty dollars ($20); for every brig, ten dollars ($10); for every schooner, seven dollars and a half ($7.50); for every steamboat (towboats excepted), five dollars ($5); for every steamship, thirty dollars ($30).

SEC. 2d. Be it further enacted, &c., That the Board of Health shall have an especial lien and privilege on the vessels so inspected for the amount of said fees and charges, and may collect the same if unpaid, by suit before any court of competent jurisdiction, and in aid thereof shall be entitled to the writ of provisional seizure on said vessels.

SEC. 3rd. Be it further enacted, &c., That all laws, and parts of, in conflict with the provisions of this act, are hereby repealed, and all laws and parts of laws on the same subject matter not in conflict or inconsistent herewith, are continued in full force and effect.

Petitioner represents that so far as it is attempted to apply said statute or statutes to the charges attempted to be collected from petitioner, the said statutes are null and void, because,

First. They are in conflict with article first, section ten, paragraph three, of the United States Constitution, which declares that, "No State shall, without the consent of Congress, lay any duty of tonnage," &c.

Second. Because said statutes are in contravention with the first article, eighth section, third paragraph of the United States Constitution, which vests in Congress the exclusive power "to regulate commerce with foreign nations and among the several States; and because said statutes are in conflict with other provisions of the United States Constitution.

And petitioners further represent that said act No. sixty-nine of the Louisiana Legislature, approved July 1st, 1882, is null and void, because said act is for a local and special purpose and was passed by the said Legislature without notice of intention to apply therefor, and without publication of notice of intention to apply therefor, as required by article forty-eight (48) of the constitution of Louisiana.

And said act No. 69 of 1882 is null and void, because it is an amendment of section 2nd of the act No. 289, approved March 18th, 1858, and of section 3040 of the Revised Statutes of 1870, and is in violation of article thirty of the constitution of Louisiana, which declares that "No law shall be revived or amended by reference to its title, but in such cases the act revived or section as amended shall be re-enacted and published at length.

And petitioner further shows that the charges exacted under pretense of defraying quarantine expenses, besides being in violation of the United States Constitution, because they are tonnage duties and regulations of commerce, are much greater than necessary to defray quarantine expenses, and are oppressive and destructive to the commerce of the State.

And petitioner further shows that the amount claimed by defendant on the vessels owned by petioners will annually exceed five

thousand dollars; and if their vessels are seized and detained the damage will exceed an additional sum of five thousand dollars.

And petitioners further say that no fees, or charges, or sums, or money whatever are due by them to the said Board of Health.

8 Wherefore petitioner prays that the said Board of Health of the State of Louisiana be cited to appear and answer this petition; that, after due proceedings, there be judgment in its favor as to all sums alleged by defendants to be due to them for quarantine fees and fumigating fees, or for alleged services.

Petitioner further prays, the annexed bond and affidavit being considered, that the defendant, its officers and agents, and the quarantine physicians be restrained and enjoined from collecting or attempting to collect fees and charges called quarantine or fumigation dues, or from collecting or attempting to collect from them under said act No. sixty-nine of 1882, or other existing statutes of Louisiana, any charge, fee, or duty for or in aid of the quarantine system of this State.

9 And petitioner further *further* prays that said defendant, its agents, and quarantine physicians be restrained and enjoined from seizing or detaining any of its said vessels, night or day, from other vessels, to the prejudice of petitioner, or from detaining petitioner's vessels longer, or in any manner treating them differently from vessels paying charges.

And petitioner — for such other and further relief as in the premises may be just and equitable, and as this honorable court shall deem meet; and it prays for cost.

(Signed) LEOVY AND KRUTTSCHNITT,
Attorneys for Petitioners.

Affidavit.

A. C. Hutchinson, being duly sworn, deposes and says he is the acting president of Morgan's Louisiana & Texas Railroad and Steamship Company, the plaintiff in the foregoing petition; that the allegations contained in the foregoing petition are true; that he

10 fears that if defendant be not restrained by this honorable court, it will enforce the collection of the fees and charges described in the foregoing petition, and that it will seize the vessels of petitioner to its prejudice and irreparable injury.

(Signed) A. C. HUTCHINSON.

Sworn to and subscribed before the undersigned, a duly commissioned and qualified notary public, in and for the parish of Orleans, State of Louisiana, at New Orleans, this 8th Nov., 1882, as witness my hand and seal.

[SEAL.] (Signed.) ANDREW HERO, JR.,
Not. Pub.

Bond of injunction filed with petition.

Know all men by these presents, that we, Morgan's Louisiana and Texas Railroad and Steamship Company, as principal, and John B.

Richardson, as security, of the city of New Orleans and
11 State of Louisiana, are held and firmly bound unto the State Board of Health of the State of Louisiana in the sum of two thousand dollars, lawful money of the United States of America, to be paid to said Board of Health, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals, and dated the 8th day of November, in the year of our Lord 1882.

Whereas the said Morgan's Company has this day presented a petition to the honorable the civil district court for the parish of Orleans, praying for a writ of injunction to issue in the cause wherein it is plaintiff and said Board of Health is defendant, and numbered —— of the docket of this court:

12 Now, the conditions of the above obligation is, that we, the above-bound Morgan's Company and John B. Richardson, will well and truly pay to the said Board of Health, the defendant in said writ of injunction, all such damages as it may recover against us in case it should be decided that the injunction was wrongfully obtained.

Signed, sealed, and delivered in the presence of—

(Signed) A. C. HUTCHINSON, [L. S.]
Act'g President of Morgan's La. & Texas R. R. & S. S. Co.
(Signed) JNO. B. RICHARDSON. [L. S.]

Order.

Let a writ of injunction issue herein, as within prayed for, and according to law, on plaintiff's giving bond with good and solvent security in the sum of two thousand dollars, conditioned as the law directs.

New Orleans, November 8th, 1882.

(Signed) N. H. RIGHTOR, *Judge.*

13 *Writ of Injunction. Issued Nov. 8th,* 1882.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

MORGAN'S LA. & TEXAS RAILROAD CO.
vs.
BOARD OF HEALTH OF THE STATE OF LA.

The State of Louisiana to Board of Health of the State of Louisiana, and its officers and agents and the quarantine physicians, Greeting:

You are hereby commanded, restrained, and enjoined, in the name of the State of Louisiana and of the civil district court for the parish of Orleans, from collecting or attempting to collect fees or charges called quarantine or fumigating dues, or from collecting or attempt-

ing to collect from the plaintiff's steamers, called the "New York, Algiers, Morgan City, Lone Star, Chalmette, Excelsior, Morgan, Whitney, Hutchinson, Hewes, Gussie, City of Norfolk, Harlan, I. C. Harris, Ar-ansas, Clinton, St. Mary, and others," under
14 said act No. sixty-nine, of 1882, or other existing statutes of Louisiana, any charge, fee, or duty, for or in aid of the quarantine system of this State, and you are further restrained and enjoined from seizing or detaining any of said vessels or from making distinction in the examination and fumigation of said vessels, night or day, from other vessels to the prejudice of plaintiff, or from detaining plaintiff's vessels longer, or in any manner treating them differently from vessels paying charges.

And you are so commanded, enjoined, and restrained until the further order of this court.

And what you do in the premises you make return thereof, together with this writ, to our said court, as the law directs.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of our said
15 court, this 8th day of November, in the year of our Lord one thousand eight hundred and eighty-two, and in the one hundred and seventh year of the independence of the United States.

Sheriff's Return to Writ of Injunction.

Rec'd November 9th, 1882. and on the same day of the same month and year I served a copy of the within writ of injunction on the Board of Health of the State of Louisiana, its officers and agents and the quarantine physicians, the defendants herein, through Dr. Jas. Jones, president of the Board of Health, in person. Ret. same day.

(Signed) P. A. McINTYRE,
Deputy Sh'r'ff.

Sff's fee, $2.00.

Answer. Filed Nov. 11th, 1882.

Div. "C," Civil District Court.

16 MORGAN'S LOUISIANA AND TEXAS RAILROAD AND S. S. COMPANY *vs.* BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 7001.

To the honorable the judges of the civil district court for the parish of Orleans:

Now comes defendants, and for answer to plaintiff's petition deny all and singularly the allegations contained therein, except as may be hereinafter specially admitted.

Respondents specially deny that they are exacting "a further fee or charge for each trip" of said vessels, "for what is called fumigation service," but allege that those fees are only collected when said

service is rendered to vessels either infected themselves or coming from infected ports, and that they have the legal and constitutional right to do so.

Respondents admit that they are rendering the services
17 and collecting the fees allowed by the act No. sixty-nine of the Legislatureof the State of Louisiana, approved July 1st, 1882, and the other quarantine laws of the State of Louisiana.

Respondents further deny that said act No. 69 is an act for a local or special purpose, and that thirty days' notice thereof was required by article forty-eight (48) of the constitution of the State of Louisiana.

Respondents specially deny that said act and the other quarantine laws of the State *or* in conflict with or contrary to article 1st, section ten, par. three, or article 1st, section 8, par. 3rd, or any other portion of the Constitution of the United States.

Respondents further deny that the aforesaid act No. 69 is in conflict with or contrary to any portion of the constitution of the State of Louisiana.

Respondents further deny that the fees collected are much
18 greater than is necessary to defray quarantine expenses, and are oppressive and destructive of the commerce of the State," but allege that they are much less in the aggregate than are absolutely necessary to maintain and support a proper quarantine to prevent the introduction of contagious and infectious diseases into the State of Louisiana and the Valley of the Mississippi.

Wherefore they pray that the injunction herein granted be annulled and dissolved, and to be hence dismissed with their costs, and for all general and equitable relief &c.

(Signed) F. C. ZACHARIE,
Of Counsel.

Petition of Intervention of the State of Louisiana. Filed Nov. 18th, 1882.

Div. "C," Civil District Court.

MORGAN'S LOUISIANA AND TEXAS R. R. AND S. S. Co.
vs
19 BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 7001.

To the honorable the judges of the civil district court of the parish of Orleans:

This the petition of intervention of the State of Louisiana, represented herein by J. C. Egan, att'y general of said State, and filed herein by permission of this honorable court, respectively represents:

That the State of Louisiana is immediately and directly interested in the issues herein involved, inasmuch as plaintiffs are seeking to annul all the quarantine laws of said State, whereby revenues are raised and provided for the maintenance and support of the quarantine system and services of said State for the prevention of the introduction of contagious and infectious diseases into the State of Louisiana, and that, should plaintiffs succeed in establishing their pretentions and obtaining judgment decreeing said laws in the re-

spect charged, in violation of and inconsistent with the Constitu-
20 tion of the United States, and as having been passed without compliance with the provisions of the constitution of the State of Louisiana, then and in that event the State of Louisiana would be obliged to levy a tax upon its inhabitants to defray the expenses of said quarantine service, or abandon the same entirely and leave the State and its people a prey to the introduction of contagious and infectious diseases, all of which would be greatly to the injury and detriment of the State and the inhabitants thereof, and the maintenance of said system by tax levy would impose an annual additional expense of at least twenty thousand dollars upon the State and the tax payers thereof.

Wherefore intervenor files this petition of intervention, and join-
ing the Board of Health, already made defendant herein, and
21 assuming the position of co-defendant herein, reiterates and adopts, as an answer to plaintiff's demand, all the allegations, denials, and defences set up in the answer of the Board of Health of the State of Louisiana as those of intervenors, as fully as if herein minutely and distinctly set forth, and prays that a copy of this petition of intervention be served on the said plaintiffs, Morgan's Louisiana & Texas R. R. & S. S. Company, through its proper officer or representative, and, after due proceedings had, that there be judgment dismissing said suit, and decreeing said laws to be constitutional and valid, and for cost of this intervention, and for all general and equitable relief, &c.

(Signed) J. C. EGAN,
Att'y General.

Order.

Let this petition of intervention be filed as prayed for, and according to law.

New Orleans, Nov. 18th, 1882.

(Signed) F. A. MONROE, *Judge.*

22 *Amended Petition. Filed December 2d,* 1882.

Div. "C," Civil District Court.

MORGAN'S LOUISIANA & TEXAS R. R. & S. S. Co.
vs.
THE BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 7001.

The amended petition of plaintiffs respectfully represents:

That all the statutes of the State of Louisiana, relied on by defendants for collection of quarantine and fumigation *they* are null and void, because they violate the following provisions of the United States Constitution:

Article first, section 10, paragraph 3, prohibits the States from imposing tonnage duties without the consent of Congress.

Article first, section eight, paragraph three, vesting in Congress the power to regulate commerce, which power is exclusively so vested.

Article first, paragraph six, section nine, which declares
23 that no preference shall be given by any regulation of commerce to the ports of one State over that of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

And for the other causes set forth in the original petition.

(Signed) LEOVY & KRUTTSCHNITT,
Att'ys for Petitioners.

Copy of petition and citation waived, and it is agreed that this amended petition be filed.

(Signed) F. C. ZACHARIE,
Counsel Board of Health.

Exception. Filed Dec. 2d, 1882.

Div. "C," Civil Dist. Court.

MORGAN'S LOUISIANA AND TEXAS R. R. & S. S. Co.
vs.
BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 7001.

For exception to the intervention herein of the State of Louisiana, plaintiff says that said intervenor has no direct interest in
24 this suit, and shows no cause for intervention. And if this exception be not maintained, then, for answer to said intervention, plaintiff reiterates the allegations of its petition and makes the said petition a part of this answer; and asks for judgment as therein prayed for against the intervenor as well as against the defendant.

(Signed) LEOVY AND KRUTTSCHNITT,
Att'ys for Plaintiff.

Testimony taken in open court Saturday, December 2d, 1882. *Filed.*

Agreement.

It is agreed that, in case of any witnesses for either side be now absent at the present trial of this cause, that their testimony shall be taken, by consent, in the clerk's office, reserving to both sides the rights of either counsel to file bills of exceptions to the admission or rejection of any testimony, or the ruling of the judge thereon
25 in the decision of the case on its merits.

It is admitted in this case that the plaintiffs are an incorporated company, that they are the owners of the vessels named in the petition, and it is agreed that all statutes relating to the Board of Heath and quarantine, and others necessary in this case, shall be considered as offered in evidence, and the laws, as published in the volumes of the reports, shall be used as if they were in the record.

Mr. HUTCHINSON, plaintiff, sworn.

Direct examination by Mr. LEOVY:

Q. Mr. Hutchinson, you are the acting president of the Morgan's Co., are you not?

A. Yes, sir.

Q. And have been vice-president since 1878?

A. Yes, sir.

Q. You have heard the names, seen the names mentioned
26 in the petition of the steamers owned by the Morgan line; the Morgan Company are the owners of those steamers.

A. Yes, sir.

Q. Between what points do they ply?

A. Between New Orleans, New York, Havana, Vera Cruz, Morgan City.

Q. You have six plying between New York and New Orleans?

A. Yes, sir.

Q. Do those six steamers stop at any other American ports?

A. No, sir; they come direct.

Q. What steamers stop at Morgan City?

A. Well, nearly all the Texas steamers. They come and go to Morgan City at different times.

Q. Those steamers coming to New Orleans, and those plying to Texas ports and Morgan City, is a matter of business, I suppose?

A. Sometimes they ply between Algiers and Texas ports. They did this last summer during the freshet.

Q. But generally?

A. Generally they run from Morgan City.

27 Q. What is the course pursued in reference to the steamers of New York quarantine station; are they stopped there as they come up the river?

A. Yes, sir; they are stopped and boarded by the officers of the station.

Q. They are stopped there for certificates of health at the quarantine station?

A. Yes, sir.

Q. Are they permitted to come up any time without the certificates?

A. Without the certificates.

Q. Yes, sir; from the Board of Health?

A. The captain always signs the order, and he brings the certificate with him.

Q. But the Board of Health issues the certificate as a general thing. I mean to vessels coming up?

A. Quarantine vessels.

Q. Well, before these certificates are issued, do you know what is done on those vessels; are they examined—the vessels from New York?

A. From my personal knowedge?

Q. Yes, sir.

28 A. No, sir; I do not know.

Q. You don't know whether they are examined or not.

A. No, sir; not to my personal knowledge.

Q. What is about the annual sums that is asked for those certificates, and for fumigation on all your vessels?

A. On all our steamers, as they run, probably exceed $5,000.

Q. Is that the charge for inspection, or does it include fumigation?

A. Inspection and fumigation fees for those that are subject to it.

Q. And that is for your vessels almost exclusively coming from New York?

A. Well, the majority of the vesels coming from New York passing the Mississippi station.

Q. What are the fees for?

A. Havana, Key West, Cedar Keys, Morgan City, and Texas ports when they come to New Orleans.

Q. Is that inspection charge made for vessels coming from Morgan City, or steamers coming around?

29 A. Yes, sir; under this new law.

Q. So that your vessels coming up from Morgan City to be repaired the charge is made?

A. Yes, sir.

Q. What is the charge now made?

A. Thirty ($30) dollars.

Q. Is there any way other than that for your vessels to come from Morgan City?

A. Yes, sir; all our light steamers can now come by way of the Atchafalaya and the Mississippi river during the ordinary stages of the river.

Q. Then there is no charge for inspection?

A. No, sir; the vessels—the steamers coming from Morgan City here almost every week; they are not inspected and not charged a fee.

Q. Coming around by the Atchafalaya?

A. Yes, sir.

Q. Mr. Hutchinson, your vessels coming from New York loaded with freight, are they subjected to these special inspection services at the quarantine station?

30 A. Yes, sir.

Q. Well, your freight coming from New York or Texas by railroad, is there any inspection of that?

A. No, sir; not at all; the same way with the freight coming from Morgan City, it is not inspected by railroad, although it comes every hour in the day, but if they come by steamers they are inspected. The steamer is 24 hours coming, and the rails four.

Q. So the freight sent to you by railroad from New York is not inspected?

A. No, sir.

Q. And that coming by steamers undergoes inspection, certificate is demanded?

A. Yes, sir.

Q. Have not bills for these services been presented to you frequently during the last summer?

A. Yes, sir.

Q. Has anything been said to you about seizure of the vessels in case the bills are not paid?

31 A. We received a notice to that effect if they were not paid.

Q. Have you not an injunction now in the U. S. court against this Board of Health?

A. Yes, sir.

Q. To restrain them in the collection of those fees?

A. Yes, sir.

Q. Fumigation services Mr. Hutchinson?

A. $25.00.

Q. The amount is $25, but what is done with that $25?

A. Well, I never have been present at——

Q. You only know what the captain told you?

A. Yes, sir.

Q. Well, I will ask you as to the consequence of it, has it generally destroyed the vermin & other things on the vessels?

A. No, sir; it is impossible.

Q. In the manner conducted down there?

A. In the manner it is reported to me it is impossible to fumigate vessels unless you tear it to pieces.

32 Q. Have you ever examined those vessels shortly after the fumigation with reference to ascertain whether roaches, rats, and things of that kind have been destroyed?

A. Yes, sir; frequently.

Q. Well, what has been the result?

A. No effect at all on the roaches, or the vermin or the rats.

Q. Well, so far as you know, has that fumigation been of service to the Co.?

A. None whatever; on the contrary, it has been an injury.

Cross-examination by Mr. ZACHARIE:

Q. About how many boats has your company plying between this port and other ports?

A. I think 18, sir; 18 or 20.

Q. How many of those vessels ply between here and Havana or Vera Cruz, or foreign ports?

A. There are two of them running at present between New Orleans and Havana, and one between Vera Cruz and Morgan City.

Q. Is that the usual number that is running between

33 those ports?

A. No, sir; sometimes we have others.

Q. How many?

A. Well, from four to five; sometimes we have cattle ships in the trade.

Q. How many of them are in the Texas trade?

A. Well, they vary at times; sometimes they are all in the Texas trade—all of the side-wheel ships.

Q. Have you known your vessels from the foreign ports to be infected with disease?

A. Yes, sir.

Q. What vessels, and when?

A. I don't recollect exactly when, or the names of the ships.

Q. Well, has it happened frequently?

A. No, sir; not frequently. It has happened, I think, in two or three instances since the war.

Q. What was the nature of the disease?

A. Yellow fever.

Q. Now, in regard to your vessels of foreign ports, from domestic ports, American ports, do you know whether infectious diseases have been imported through your vessels?

34 A. Not that I know of, sir. No, sir.

Q. Do you know of a case or do you remember a case of a man who was suffering from the small-pox then introduced into the city of New Orleans from Havana or Florida on one of your vessels during the past winter?

Counsel for plaintiffs object, upon the general ground that it is irrelevant.

RULING—Court sustains the objection, for the following reasons: That, as the court understands it, the object of the question is to show that in the absence of quarantine it is possible or probable that persons suffering with infectious diseases may be brought from other American ports, or from foreign ports, into the port of New Orleans upon the plaintiffs' vessels, and, this being the case, the court considers the testimony as irrelevant, for the reason that, no
35 matter what answer may be given to the question, the court would nevertheless assume that it is possible and may be probable that persons suffering with infectious or contagious diseases may be brought into the port of New Orleans upon plaintiffs' vessels.

To which ruling of the court counsel for defendant excepts, on the ground that the question is for the purpose of showing that contagious diseases have been introduced into the city of New Orleans by plaintiffs' vessels coming from domestic ports as well as foreign ports, and that the quarantine is necessary to the protection of the health of New Orleans.

Q. You say, Mr. Hutchinson, that you have no practical personal knowledge of the manner in which this fumigation is carried on?

A. Personally I have not seen it done here at this port.

Q. You say that whatever it may be that it is of no service to the company?

A. Yes, sir.

36 Q. Do you understand to pronounce an opinion as to whether or not that fumigation is effective or non-effective, in ridding the vessel of any infectious or contagious disease?

A. In the way it is done, I do say so.

Q. That is your opinion?
A. That is my opinion.
Q. You have no knowledge of those matters professionally, have you; you are not a medical man?
A. No, sir; I know that they don't fumigate the vessel; they don't clean it; they don't attempt it.
Q. What do you mean by not cleaning it?
A. Because they don't reach on an average one-half of the vessel; at least one-half of the vessel is not touched.
Q. Do you state this of your personal knowledge?
A. Yes, sir; I do.
Q. Well, how can you state that of your personal knowledge, when you state that you don't know how this fumigation is performed?
A. I know how it is done; I have heard.
Q. I want to know what you know.
37 A. Well, I know the sun rose this morning, but I didn't see it; I know how the fumigation is done thoroughly; I know where the fumigation materials are placed.

By counsel for plaintiff:

Q. Mr. Hutchinson, will you state how those vessels are loaded, and give your reason, which, I understand, you had as to why this material does not extend through the whole vessel; just state the facts?
A. Well, there are many places in a vessel they do not approach; they don't attempt to approach; they can't approach; places where the foul air of the vessels is received; they can't get at it without tearing it to pieces; there are apartments in a vessel which they never approached; they can't do so, if, in other words, they fumigate a vessel as they do, as I know they do, it would be like fumigating one room in this court-house without fumigating the balance.

By counsel:

Q. Now, Mr. Hutchinson, do you know a case, and if so,
38 please state it, where a contagious or infectious disease developed itself on board of one of your vessels after having been fumigated at the quarantine station?
A. Yes, sir; I know of one or two cases.
Q. Will you please state what they were?
A. I couldn't state here exactly, but I know of cases—I don't remember the names of the ships—I know of cases that came to the quarantine station, and the fever has broken out afterwards.
Q. When?
A. Well, since the war; I can't fix the dates exactly. Probably I can give you the dates, if I can find the ships at the time. I have known of vessels being fumigated, and the fever broken out.
Q. Has it been during the administration of the present Board of Health?
A. I don't recollect whether we have had a case since the administration.

Q. Was it under the Choppin administration?

A. I think it was; but I would say that, so far as I know,
39 the fumigation is precisely alike; there has been no difference.

By plaintiff's counsel:

Q. You were a member of the Board of Health?

A. Under the Choppin administration—yes, sir.

By counsel:

Q. Was any of those cases reported to the authorities?

A. The authorities knew it, because the vessel was at the quarantine station.

Q. I understand you to say these vessels; these diseases had broken out after the vessel left the quarantine station.

A. I didn't say after she had left the quarantine station. The vessels had been fumigated, and laid there ten days afterwards.

Q. Then she did not pass the quarantine station and introduce the disease here?

A. No, sir; not in the case I speak of. I think there were several cases of that kind this year at Pensacola & Ship Island.

40 Q. Well, you stated that you were a member of the Board of Health at one time?

A. Yes, sir.

Q. Do I understand you to say that the quarantine should be abolished? that it cannot prevent the introduction of contagious or infectious diseases?

A. No, sir; not at all.

Counsel for plaintiff objects.

WITNESS: I could give still a stronger reason for that, if you wish to know it.

Q. For what, sir?

A. For the fumigation—for the results of it. Well, I will say to you, when we are in the habit of overhauling our ships and tearing them all to pieces, that in order to kill the roaches that infest all ships we put a pot of sulphur inside of the rooms, and seal them up tight, and keep the sulphur in there a day, and probably two or three days, after the rooms are opened, before you can go into
41 the room without an unpleasant odor from the sulphur, and yet within two or three days we find the small roaches, the vermin, coming out of the cracks in the same room, while all the large vermin the sulphur has reached it has killed; but all the small roaches in the crevices in the room will be seen coming out again, and then we have to fumigate again.

By plaintiff's counsel:

Q. Is it possible for that air thus fumigated to reach all parts of the vessels?

A. It is if it is done in that way.

Q. In the way you speak of?

A. Without taking the vessels to pieces; without that it is utterly impossible; all those places are air-tight, water-tight.

Q. Is the difficulty increased when she becomes loade- with goods?

A. When a vessel's hold is full of goods, and the sulphur is put (above the) closed hatches, I don't know by what process
42 that sulphur can reach that cargo.

Q. Have any of your vessels come up without—I mean, in other words, are you- vessels treated like all other vessels?

A. Yes, sir.

Q. They have not treated your vessels in that respect different [in] respect to other vessels?

A. No, sir.

By def't's counsel:

Q. You have stated that if the sulphur is burned above you didn't see how it could descend. Do you know, or not, that sulphuric acid as a fact, generated by the burning of sulphur, is heavier than the atmosphere and descends?

A. Yes, sir; perfectly well. It cannot descend through a cargo, nor could it descend through an air-tight ceiling; that in order to clean a vessel, have to take that ceiling out. We take it out and clean the ceiling of the vessel entirely That is a matter of six or seven weeks.

43 *Testimony taken Saturday, December 2d*, 1882. *Filed Dec. 14th*, 1882.

Civil District Court.

MORGAN'S R. R. AND STEAMSHIP COMPANY *vs.* BOARD OF HEALTH. } No. 7001.

Dr. FINNEY sworn for defendant.

Direct examination by Mr. ZACHARIE:

Q. Dr. Finney what official position do you occupy at present?

A. Quarantine physician of the Mississippi river station.

Q. Who are you appointed by?

A. By the Governor of the State.

Q. What is your salary and duties?

A. My salary is $5,000 a year; my duties are to examine every vessel that enters the Mississipi river from any all ports to see that these vessels do not introduce diseases of an infectious or contagious character.

Q. Under whose control are you in the execution of your duties?

44 A. In part the Governor, and in part the Board of Health of the State.

Q. How long have you been acting as the quarantine physician at the Miss. station?

A. I have been acting as quarantine physician continuously now since May, 1879—I think 1880.

Q. Then, were you ever quarantine physician before?

A. I was, sir; in 1877.

Q. How long a time?

A. In 1877?

Q. Yes, sir.

A. About 8 or 10 months.

Q. Are you a regular practising physician?

A. I am, sir.

Q. How long have you been so?

A. Since 1871, I think.

Q. Of what medical college are you a graduate?

A. Graduate of the University of Louisiana, medical department.

Q. Have you been in the continuous practice of your profession since your graduation, except while at the quarantine station?

45 A. I have, sir.

Q. Are you familiar with contagious & infectious diseases?

A. I have had considerable experience with them.

Q. Where?

A. In this city and at the quarantine station.

Q. Have you had a special experience in the detection and treatment of contagious diseases in the city of New Orleans? I- yes, state what it was.

A. I have had with small-pox, inasmuch as I was physician of the small-pox hospital of this city for some four or five years. I have had considerable experience with yellow fever, both in this city and in Shreveport.

Q. During what epidemics or seasons?

A. In the Charity Hospital of this city in '69, in '70 and '71; in Shreveport during the epidemic of '73.

Q. How did you come to go to Shreveport?

46 A. I volunteered to go there when the people of Shreveport called upon New Orleans for assistance in the way of physicians.

Q. Now go on, any other years?

A. Again in '78 I had experience at quarantine station, of yellow fever, in 1877; in New Orleans during the epidemic of '78.

Q. Now, please state, in as brief a manner as possible, how the inspection and fumigation service at the quarantine station on the Mississippi is performed, commencing with the arrival of the vessel opposite the quarantine station; what is done? How is she approached, and then the particulars?

The counsel for plaintiffs suggest that you should first give your testimony in regard to the vessels; the process of treating vessels from non-infected ports, and then infected ports.

A. Vessels arriving from New York, either myself or my assistant board them on their arrival at quarantine station.

47 Q. How do you board them?

A. In a small boat.

Q. Owned by what?

A. By the quarantine station.
Q. How many boatmen is necessary?
A. Five.
Q. How long are they on duty?
A. They are on duty at all hours of the night.
Q. Do you know what pay they receive?
A. I do.
Q. Then you approach the vessel?
A. Yes, sir.
Q. Then what happens?
A. Then we call upon the captain and submit a series of questions to him, which, if he answers satisfactory, we——
Q. The subject, and the substance of the questions?
A. As well as to where he is from, the name of his vessel, his own name, the time of his voyage; whether he had any sickness on board of his vessel while at the port he left, or during his voyage,
48 and if every one was well at the time of his arrival at the quarantine. All these questions being answered satisfactory—there being no sickness, nor having had any on board—we furnish him with a permit to proceed to New Orleans.
Q. Do you go through the vessel?
A. No, sir; not unless we have—as a general thing we don't go through the vessel when we have a suspicion of there being something hidden; the captain's statement—or again we frequently put the captain under oath when we thought that he would wish to screen any facts that might cause his detention at quarantine.
Q. Why is that done?
A. For the better protection of the health of the valley of the State.
Q. Have you known cases of concealment on the part of the captain?
A. I have, sir.
Q. Then, you say if those questions are satisfactorily answered, and you have no reason to believe that she has sickness on
49 board or anything suspicious about her, you give her certificate; suppose there is anything suspicious about her?
A. We detain her.
Q. What do you do then?
A. And then, after examining the patient, if we ascertain that the diseases are of an infectious or contagious nature, we take the patient there to the hospital, provide the patient with all necessary medical attention, medicines and so forth; we disinfect the vessel by——
Q. Will you please state the manner of disinfection?
A. We cause all the ship's bedding to be treated with a solution of carbolic acid, put upon deck and airified, subsequently replaced into some portion of the vessel, the cabin, or the hold, and there subject it to the fumes of sulphur; the bilges are treated with a solution of copperas.
Q. Tell what you mean by "bilges."
A. That part of the vessel that is between the outer plank-

50 ing and inner lining of the vessel upon either side of the kelson where fluid is liable to accumulate frem leakage.

Q. How do you say that is treated?

A. That is treated with a solution of copperas; the bilges are pumped out, fresh water pumped in, the solution of copperas poured in, repumped out, and retreated in that way.

Q. During the space of what time?

A. Well, we would detain a vessel that brought an infectious disease there for a period of not less than ten days after the taking of the patient to the hospital.

Q. What steps, if any, are taken in regard to the effects, clothing, &c., of an infected passenger or member of the crew, or other persons found there, or anything that he has been in contact with?

A. It is generally destroyed by fire.

Q. Now, in regard to the fumigation by sulphur, how is that performed?

A. That is performed by placing a quantity of sulphur in large iron pots, one or more pots being placed in the compartments

51 of the vessel.

Q. Below decks?

A. Below and above decks.

Q. Then what is done with that sulphur?

A. Those pots are put into those compartments and stay, after being set fire to are allowed to burn there and generate this gas.

Q. How long are they burned?

A. Well, we leave them in as a general thing not less than six hours, sometimes twenty-four.

Q. Do you do anything with the hatches above deck when the pots are placed below in the compartments; do they remain open or shut?

A. Why of course they are closed, the hatches are put on and the taurpolins put on to cover them and make them as air-tight as possible; everything on the vessel is closed.

Q. Do you ever discharge cargo?

A. Yes, sir.

Q. In what cases?

A. Well, sometimes in cases where no disease exists aboard the vessels, but when they come from infected ports, and where it is likely that infection might exist in the cargo.

52 Q. Well, what do you do then?

A. We then take the cargo out, and put it in the Government warehouse, fumigating the cargo in the warehouse, and fumigating the vessel daily as it is being discharged.

Q. Now, in regard to the number of the pots; how many do you use; or does it vary according to the size?

A. It varies according to the size and construction of the vessel.

Q. It depends upon the size of the vessel?

A. Yes, sir.

Q. Please state, then, about the relative use of these pots, etc.

A. Well, if we were fumigating a schooner, we would probably use

not more than 2 pots; if we were fumigating a small brig or bark, we would not use more than three pots.

Q. Suppose you would get a large steamer of three or four thousand tons?

A. Well, we would need from five to seven pots to fumigate her.

Q. How many pounds of sulphur are used in each one of
53 thes- pots, about?

A. Well, that varies, sir; we use from 40 to 75 pounds of sulphur in a pot.

Q. How many boatmen did you say employed?

A. Five.

Q. At what salary?

A. 40 and 45 dollars a month.

Q. Have you a watchman?

A. I have, sir.

Q. What is his duty?

A. His duty is to remain on watch from sunset till sunrise, and to call the boatman, and either myself or my assistant, when the vessels come in sight.

Q. You have an assistant, then?

A. Yes, sir.

Q. Is he a practising physician, regularly graduated?

A. He is, sir.

Q. Do you and your assistant reside at the quarantine station?

A. We do, sir.

Q. What is the pay of yourself and your assistant?

A. My assistant gets $2,000 a year.

Q. Do you consider that pay as proportionate to the services that you are called upon to perform?

54 A. Well, no, sir, I do not.

Q. Do you think it less or more than a physician?

A. I think it is less.

Q. Now, what assistance, in the way of help, do you require in the process of the fumigation of vessels & disinfecting by solution of carbolic acid?

A. I require the assistance of all my boatmen, and frequently the assistance of some of the crew.

Q. Well, suppose, now, that you have completed the disinfection of a vessel which is either infected or comes from an infected port—what is done, then?

A. I would detain her the length of time prescribed in the Governor's quarantine proclamation, if such exists. If, at the expiration of that time, the vessel has shown no evidence of being infected, she is permitted to proceed to the city.

Q. During the time that the vessel is detained, do you, or
55 your assistant, board the vessel daily, or oftener?

A. Yes, sir.

Q. What do you do on those visits?

A. Make an inspection of the crew.

Q. Do you inspect the passengers?

A. Yes, sir—when they have any.

Q. Is the personal baggage, or baggage of the crew, officers, and passengers, inspected by you?

A. Yes, sir.

Q. Then you give a certificate?

A. Yes, sir.

Q. And she comes on to the city of New Orleans?

A. Yes, sir.

Q. What is done in regard to the payment?

A. Before I issue that certificate, I present the captain with a bill for quarantine inspection fees, and also for disinfecting and fumigation fees.

Q. When performed?

A. Yes, sir.

Q. Have you got the form of that certificate that you give?

A. No, sir; I know the form, though.

Q. What is the form?

A. Simply, after heading it with the dates, the heading is: "Mississippi River Quarantine Station, Louisiana, such dates, Dec.
56 22, 1882. Permission is hereby granted to (blank), whether it be schooner, brig, or bark, whatever it might be, to proceed to New Orleans." Signed either by myself or my assistant, in our official *official* capacity.

Q. What property has the State of Louisiana at the quarantine station for the purpose of maintaining that station?

A. Well, she has a piece of ground there, I think, that has 8 or ten acres front on the river.

Q. Which bank?

A. Left bank.

Q. Do you know how that was acquired?

A. It was acquired by purchase.

Q. What was the price?

A. I do not know.

Q. Do you know what buildings, if any, have been erected and now exist at that quarantine station for the purpose of quarantine?

A. There is one large hospital devoted to the treatment of fever cases.

57 Q. Cases from ships?

A. Yes, sir; there is one large hospital for the treatment of small-pox; there is a building for the boatmen's quarters; there is a building for the physicians; there is a very large warehouse erected by the U. S. Government.

Q. That is not the State of Louisiana. How is the sustenance of the quarantine physicians and other employees at that station provided for?

A. There sustenance?

Q. Yes, sir; board?

A. They provide that themselves.

Q. Pay for it themselves?

A. Yes, sir.

Q. Can you state about what the value of those buildings are irrespective of the ground?

A. The entire property of the quarantine station?

Q. Yes, sir; boat houses?

A. Well, to put up such improvements I think would cost about $25,000.

Q. Did you know what they actually cost, about?

58 A. No, sir.

Q. Do you know (I am only asking you approximately) what the expenses are per annum in repairing & keeping in order.

A. What the expenses are?

Q. Yes, sir.

A. Well, that I could not answer; I could not tell you what they ought to be.

Q. About how much?

A. It is not a species of guess, it would take from five to 6 thousand dollars a year to keep the station in proper repair.

Q. Now, Doctor, in addition to these boatmen and other employees, did you have to employ nurses?

A. Yes, sir.

Q. How many nurses did you employ?

A. Well, I have two constantly.

Q. What is their pay?

A. One gets $40 and the other gets $20 a month.

Q. Do you at any time employ extra nurses?

A. Yes, sir.

59 Q. Do you employ other nurses at other times?

A. Yes, sir.

Q. How many?

A. Well, according to our requirements.

Q. At about the same pay?

A. Well, no, sir; we have to pay them a good deal more.

Q. About how much?

A. Well, I have paid for nurses at the station there as much as $4 a day.

Q. Do you have anything to do with vaccination there?

A. Yes, sir; have to do with vaccination, just as we have to do with other means resorted to for the prevention of the introduction of disease.

Q. Please state what you do.

A. Whenever a vessel would arrive at quarantine with a case of small-pox on board, for instance, I would vaccinate every one on board.

Q. Is there any special charge for that?

A. No charge at all.

Q. Now in regard to these hospitals for the taking care of

60 small-pox and yellow fever and other diseases; are they furnished with bed and other things?

A. Furnished with everything, every requirement, medical attention, medicines.

Q. Food, etc., etc.?

A. Everything that is necessary, sir; for which there is no charge.

Q. Do you know the amount of repairs that was placed upon those buildings during 1881.

A. Yes, sir; I think there was between 6 and 7 thousand dollars for repairs.

Q. Are the stations in condition now, in perfect order?

A. No, sir.

Q. In what respect are they deficient?

A. Well, they are deficient, inasmuch as they should have other buildings there for the accommodation of passengers detained during quarantine season.

Q. Is there any other deficiency in your boarding facilities?

A. There is deficiency in regard to our wharf and boat
61 house. That alone would require an expense of $2,000 to remedy it.

Q. Have you had estimates made upon it?

A. Yes, sir.

Q. Now, in regard to your facilities for boarding at night and during the day. Are they what they should be?

A. No, sir.

Q. In what manner are they deficient?

A. They are deficient, inasmuch as that I could afford better accommodations to the shipping—less detention of them—if I had a steam launch for boarding. When I have a number of vessels in quarantine it is almost impossible for me to make an inspection of every one of them daily.

Q. Do you use the same crew—boat crew—night and day?

A. Yes, sir.

Q. Now do you know what the revenues of that station are approximately?

A. Yes, sir.

62 Q. Are they sufficient, insufficient, or do they exceed the necessary expenses of that station?

A. To be—that station—in the condition that I would consider it to be first-class, the present revenues of the station would not be sufficient for maintaining it.

Q. Would they be in any year that you have been there?

A. In any year that I have been there?

Q. Yes, sir.

A. No, sir.

Q. Do you know how the revenues of the station compare this year with preceding years?

A. I think they are somewhat behind preceding years—considerably.

Q. Have they been falling behind for some time?

A. Yes, sir.

Q. Doctor, the process of disinfection which you have mentioned, do you know whether this is the same process that is resorted to in other ports of the Union and elsewhere?

A. Well, I know that in other ports they resort to somewhat similar means of disinfection, but I don't think they do it as
63 thoroughly as we do at our station.

By plaintiffs' counsel:

Q. Are you speaking from your knowledge?
A. No, sir; from what I have been told by captains of vessels.

Counsel for plaintiffs objects.

By counsel:

Q. Is this the system that is adopted by the experience of the medical fraternity as the proper system of disinfection?
A. It is, sir.
Q. Do you know if other systems have been tried and found to be less efficacious
A. I do.
Q. Such as what?
A. Such as generating other gases.
Q. Do you remember the system of Perry?
A. Well, Perry's system was pretty much the same as the one we have, with the exception of using pots instead of furnace.
Q. Did you have the freezing system?
A. No, sir.
Q. Well, wasn't there such a system tried?
64 A. There was such a system tried.
Q. Now, from your experience as a medical man (I am asking your opinion as a medical man) is the system in vogue now?
A. Yes, sir.
Q. Doctor, do you know of any other point in connection with this quarantine service that is material to the issue here presented? If so, please state it.
A. Well, I don't suppose I can comment upon anything Mr. Hutchinson has said. He said we charged for vessels coming from Morgan City, and I have never charged for vessels coming from Morgan City. That must have been an error on the part of my assistant, because I have instructed him to the effect that he should not charge those vessels; I know I never did.
Q. So far as you know, has this system of quarantine proved effective or non-effective?

Counsel for plaintiff objects to the question, on the ground
65 that it is the opinion of a party who could not be an expert in such matters; it is a question of inference.

Objection overruled.

Q. I forgot to ask you, Doctor, after you granted those certificates and so on, what did you do with these drafts about any reports concerning these vessels.
A. What do I do with the drafts?
Q. Yes, sir.
A. I take a draft from the captain upon the agent, owner, or broker of the vessel, made payable to the order of the secretary and treasurer of the Board of Health, and I forward it to the secretary and treasurer of the Board of Health for collection.

Q. Do you make any report about the sanitary condition of the vessel?

A. I make a report weekly of all the vessels arriving at the station, and, whenever it is necessary, a special report upon any vessel arriving with any infectious disease.

Q. How are you and your employees at that station paid?

A. We are paid out of the revenues derived from that.

Q. Who pays you?

66 A. The Board of Health of the State of Louisiana.

Q. Through whom?

A. Through their president and secretary.

Cross-examination by Mr. LEOVY:

Q. You have stated that your salary of $5,000.00 a year was paid by the quarantine station, by the Board of Health.

A. Yes, sir.

Q. Do the duties of that quarantine require your presence all the time down there?

A. Pretty much all the time, sir.

Q. Well, the president of the Board of Health, what is his salary?

A. $2,400.00.

Q. Who pays that? Where does it come from, the $2,400.00?

A. It comes from the general revenues of the board.

Q. Has not the president of the Board of Health many duties to perform up here in the city of New Orleans? Is he not, to a great extent, a police officer?

A. Yes, sir.

Q. His business, to some extent, is to see that the streets

67 are kept clean, the city disinfected?

A. Not his business to see that done.

Q. As the president of the Board of Health, is it not his duty, to some extent, to superintend the health of the city of N. O.?

A. Yes, sir.

Q. Well, then, you have a treasurer, have you not?

A. Yes, sir?

Q. What is his salary?

A. $2,000.00, sir.

Q. And you have a secretary?

A. Yes, sir.

Q. What is his salary?

A. I don't know, sir; the secretary and treasurer are one, sir.

Q. What is his salary?

A. $2,000.00.

Q. Well, are their duties confined strictly to the quarantine station, or have they not to—are not their general duties included as health officers of the city of New Orleans?

A. Well, the duties of the secretary of the Board of Health is to attend to all of the clerical work the board requires him to do.

68 Q. And the treasurer receives all the funds which is received by the Board of Health?

A. Yes, sir.

Q. Is not a large portion of that fund received as fees for recording marriages, births, & deaths?

A. They receive fees for that, yes, sir.

Q. And his duties as treasurer relate to everything concerning the funds belonging to the Board of Health?

A. I think it does, sir.

Q. In other words, those gentlemen are city officials, with reference to the city of New Orleans, as well as State officials, are they not?

A. Well, they are State officials, but they are not city officials, strictly speaking.

Q. But they perform many duties in the city of New Orleans, not connected with quarantine vessels, do they not?

A. Yes, sir.

Q. Is not most of the time of the president of the Board of Health taken up here in New Orleans with questions relating to the health of this city?

69 A. Yes, sir; I think that takes up most of his time.

Q. Now, as to this matter of certificates referred to (we will confine ourselves to the present—to the line of steamers belonging to the Morgan Co.); there are six of those steamers in the New York trade; we will say the "New York" arrives at the quarantine, you go on board and you ask the captain, if he is not from New York, and whether he has not been to any other port than American ports.

A. Yes, sir.

Q. Well, do you not then give him a certificate of health?

A. I ask him all the other questions that we generally propound, whether he has had any sickness while in New York or on the the voyage.

Q. As a general thing is not that the only duty you perform?

A. That is about all, sir.

Q. Now, in reference to fumigation, where that fumigation is rendered, for which you charge $25.00 only, and where there is

70 no case of sickness on the vessel, do you do anything, as a general thing, more than use the sulphur—these pots of sulphur; I mean when the vessel is not specially detained by sickness; on the boat you simply fumigate and charge $25.00.

A. Yes, sir.

Q. You don't apply these pots of sulphur from 5 to 7; you only apply to a large steamer—that is the usual number?

A. Yes, sir.

Q. What does that sulphur cost, when used about five pots from 40 to 70 pounds; what is the cost of that sulphur?

A. I don't know, sir.

Q. Well, about?

A. Four or five cents a pound; I believe it is about that.

Q. How many pots of sulphur do you generally use on each of the Morgan vessels to fumigate for which you charge $25.00?

A. Well, we don't always charge $25.00.

Q. What is generally the fee?

A. Sometimes $20.00.

71 Q. Well, what fee less than $20.00 on the Morgan's steamers; did you ever charge less?

A. No, sir.

Q. How much did you say that surplus cost?

A. I don't know positively; I think it cost about 5 cents.

Q. It cost about 5 cts.?

A. Yes, sir.

Q. And the pot is from 40 to 75 pounds?

A. Yes, sir.

Q. Do you ever use, in reality, over 2 pots on each of the Morgan steamers?

A. Yes, sir; always.

Q. How many?

A. Never less than four.

Q. When you use 4 or 5 pots of sulphur for this fumigating purpose upon the Morgan steamers, where do you put the five pots?

A. One in the cabin, one in the fore, and one in the after-hold and the forecastle.

Q. Are not those vessels exclusively freight vessels to which I have referred—are they not exclusively freight vessels?

72 A. Yes, sir; freight and passenger.

Q. The Morgan vessels are not passenger vessels?

A. Yes, sir.

Q. I am speaking of the New York vessels; I am confining your attention to the 6 vessels coming from New York.

A. We do not fumigate them.

Q. The others you do fumigate when they come from infected ports, and the fumigation, as you have stated, is from 4 to 5 pots?

A. Yes, sir.

Q. You never fumigate New York vessels?

A. No, sir.

Q. When those vessels are loaded with freight (I am not speaking of the 6 vessels), is it your opinion that the fumes from the 4 or 5 pots penetrate the whole vessel from stem to stern—from top to bottom; when you use 5 pots of that sulphur only, and placed them as you said, is it your opinion that the fumes penetrate every por-

73 tion of the vessel?

A. Every portion that has an opening.

Q. When she is loaded with freight?

A. Yes, sir; right down to the kelson.

Q. And through all portions of the freight?

A. Yes, sir.

Q. How can the fumes get to the lower part of the vessel when she is loaded with freight?

A. Well, it gets there through the very smallest crevices imaginable.

Q. And penetrates through every portion of the freight?

A. Well, it would not penetrate through every portion of the freight; not through boxes.

Q. Well, between boxes and packages, when tightly stowed, so as

to penetrate the lower part of the vessel, so as to destroy any germs that may be there—is it your opinion that those fumes penetrate sufficiently for that purpose?

A. Yes, sir.

Q. Well, now, about the bilge-water?

A. Well, in iron vessels they seldom have bilge-water.

74 Q. There is a space of about 16 to 18 inches between the hull—the iron hull of a vessel—and this plank floor, which exists in every vessel, and divided by kelsons, and, as I am told now, hundreds of compartments. I am giving you this information to enable you to understand my question. There are hundreds of these compartments, dividing the hull of a vessel from the flooring, and generally the vessel contains large quantities of bilge-water, which produces animalcule- & fumes, which is dangerous. Now, I ask you if it is possible that the fumes of 4 or 5 pots of sulphur can penetrate that?

A. And reach that bilge-water?

Q. Yes, sir.

A. Not in my opinion, sir. We treat that different; with a solution of sulphur of iron.

Q. I am speaking simply with sulphur.

A. We never confine ourselves with fumigating with sulphur.

75 Q. I have it down here. In some instances you use 4 to 7 pots of this sulphur for vessels, and nothing else.

A. O, no, sir.

Q. Do you in every case use carbolic acid?

A. Yes, sir.

Q. Well, then, how do you reach this bilge-water?

A. We pour it through pumps.

Q. So as to reach probably a hundred compartments, separately divided, making distinct little rooms?

A. I never knew there were a hundred compartments. If there were a hundred compartments then the solution could not reach them. The first time that I knew a ship's bilge was divided into a hundred compartments. I don't see how the vessel could pump her bilge-water out.

By def't's counsel:

Q. In reply to that last about pumping these hundred compartments?

76 A. To my knowledge there is one or not more than 3 pumps leading down to the bilge of any vessel I have ever seen, and it is through those pumps that we insert this solution of carbolic acid and sulphate of iron.

By counsel:

Q. Have you used this carbolic acid for the Morgan vessels?

A. Yes, sir.

Q. And the copperas also for the bilge water?

A. Yes, sir. As far as that is concerned I will state that we make no distinction between any of the vessels coming from infected ports or in a vessel that requires fumigation. We treat them all alike.

Q. Well, don't you make a difference where there [is] disease on a vessel and where there is none?

A. We make this distinction. We give them repeated fumigation.

Q. You say that the sum received by this system of taxation is inadequate for quarantine purposes—that more was needed?

A. Yes, sir.

77 Q. Well, do I understand you to say that the remedy is that these charges should be increased on vessels?

A. No, I believe that if the Morgan steamers and the Cromwell steamers were to pay their dues that the revenues derived at that station would be sufficient to maintain it properly.

Q. Those two lines would be sufficient to produce the revenues?

A. Yes, sir.

Q. That being the case, Doctor, will you be good enough to state why this bill was introduced for doubling the tonnage by the Legislature—the bill that was introduced by the Board of Health to the Legislature—the bill providing for the tonnage duties, $60.00 at night and $30.00 in the daytime.

A. I didn't know that any bill was introduced providing for the tonnage at all, sir.

Redirect examination by Mr. ZACHARIE:

78 Q. During your cross-examination you stated that the whole time of the president was taken up in regard to the local sanitation of New Orleans; did you mean that?

A. I made no such statement that the whole of the president's time was taken up.

Q. What did you state?

A. I said the greater part of it.

Q. You were interrogated in regard to the local sanitation of New Orleans; is it or is it not a fact that the local sanitation of the city of New Orleans is provided for by a special amount and appropriation by the city council of the city of N. O.?

A. It is, sir.

Q. Included in their budget?

A. Yes, sir.

Q. Now, you say, as I understand you, that you use from 3 to 7 pots in fumigating; each one of those pots contains how many pounds, you say?

A. From about 40 to 75.

79 Q. And the sulphur is worth about five cents a pound?

A. I think it is about that; I don't know exactly.

Q. Then the burning six hours of each pot costs from $2.00 to $3.75.

A. It cost about that; yes, sir. It really costs more than that, I think, because you have to take into consideration the cost of the pots.

Q. I am speaking now of the material used?

A. Yes, sir.

Q. Well, then, if there were three pots used, there would be from 6 to—something like 10 or 13 dollars—used in those 3 pots in material?

A. Yes, sir.

Q. Where there was 7 it would amount to as much as 14 to 22 dollars. Now, in regard to the use of sulphate of copper, iron, and carbolic acid, what does that cost; what is the cost of the material?

A. I don't know what the cost of the material is.

Q. Can't you approximate it?

A. No, sir; I haven't any idea.

Q. How much copper is used?

80 A. Well, that varies.

Q. Approximately?

A. For a single disinfection we would use from between 25 & 100 pounds.

Q. You don't know how much it cost a pound?

A. No, sir.

Q. Well, then, in regard to the iron you say you used?

A. Well, that is sulphate of iron.

Q. Well, then, in regard to the carbolic acid; how much do you use of that?

A. Use from one to three gallons.

Q. What does it cost?

A. I don't know, sir, what it costs.

Q. Well, can you approximate the actual cost of the material of each disinfection?

A. Of each disinfection?

Q. Yes, sir.

A. Well, I should think it would be in the neighborhood of somewhere about 12 or 14 dollars altogether.

Q. Suppose you fumigate repeatedly, does it cost that every time?

A. Yes, sir.

81 Q. Then, if a ship that has this process applied to her 3 times, it would cost from 36 to 42 dollars?

A. Yes, sir.

Q. Is this irrespective of labor and the utensils used?

A. No; that includes ware and tare of the pots, but it does not include labor.

Q. In regards to the occupation of the president, what do you speak from; your personal knowledge or from general reputation?

A. Well, from my personal knowledge; that is, not as regards the present incumbent—his predecessor, as I was a member of the Board of Health some years, and knew the duties that were required of him.

Dr. JOSEPH JONES, sworn for defendant.

Direct examination by Mr. ZACHARIE:

Agreement.

Dr. Jones, witness being put upon the stand by the defend-
82 ant. It is agreed that Dr. Jones, the witness, president of the Board of Health, and a member of the former Board of Health, would, if testifying in detail, corroborate what Dr. Finney, the preceding witness, had said and stated, except in so far as the particular points upon which he may be interrogated.

Q. Now, Doctor, you have heard the testimony of Dr. Finney; will you please state any errors that he has made during the course of his testimony?

A. I think the testimony is not entirely correct, in one point in which his testimony is not sufficiently explicit; that is, in reference to my own duties.

Q. Please state what your duties are.

A. My duties are defined by the act of '55 and the additional and subsequent act of 1858, also the act of 1877. The duties of the president of the Board of Health are to conduct the correspondence of the Board of Health, supervise the quarantine station, and to visit
83 them as often as the board may direct, to preside at the meetings of the board, and submit all questions to the board of interest. He is also empowered, during the interim of the meeting of the board, to issue all orders to sheriffs; he has constantly, through the whole time that he is in office, to pay attention to matters, and he is never relieved from that duty.

Q. State, Doctor, in regard to the particular cases of quarantine that are reported to you, what your duties are, and how you perform them.

A. All questions relating to the condition of ports, whether infected or healthy, are brought to the knowledge of the Board of Health at every meeting.

Q. By correspondence?

A. By correspondence and every means of information, orders are immediately issued to quarantine physicians in the whole course of the State, warning them of the condition of any port and the necessity of taking action in reference to any infected port; rules are prescribed and the time of detention is (even when there is no proclamation by the Governor) *is* controlled by the Board of Health.

Q. Now, in regard to particular cases of vessels?

84 A. All cases during the interim of the meeting of the Board of Health, the violation of the law, are reported to the president, and if the law has been violated the criminal sheriff is ordered to seize the vessel subject to the order of the Board of Health. In the case of the "Excelsior," "Vanguard," and other vessels well known, they were seized by the sheriff and sent back to the quarantine station. Then, during the months of excitement the owners do not appeal to the Board of Health in reference to matters of de-

tention. In the time that the board is not meeting, these matters are brought before him. Most of his duties rest right there. Nearly one-half of his reports are taken up with litigation, &c., and the great cost of the reports is due to that fact. The cost of the hostility of the maritime interest of La.

By plaintiff's counsel:

Q. The whole maritime interest?
A. I say, our maritime interest; I don't specify it.

By counsel:

Q. Doctor, can you state the number of employees, salaried employees, of the Board of Health?
85 A. We have, for instance, at Miss. quarantine.
Q. State the round numbers and expenses.
A. I will have to give it in detail to be accurate. At Miss. quarantine there is a physician & his assistant, one at a salary of $5,000.00, and the other at $2,000; we have, as the doctor stated, 5 boatmen at salaries from 40 to 45 dollars per month, and two nurses.

By pl't'ff's counsel:

Q. Haven't you stated in some of your reports recently that the expenses was $25,000.00?
A. Yes, sir.
Q. Can you not state that?
A. I can continue; we have, by the laws of the State, to keep up a quarantine at the Riggolettes; we have an officer and three boatmen, officer at $125.00 a month during the summer months, and the boatmen at $40 dollars a month; we have also at the Atchafalaya by law to keep up the quarantine station, and the quarantine fees should apply at that station [as] well as the Miss.; the Atchafalaya station requires an officer, his salary has ranged from $100 to $75 a month, and a boatman at $40 a month; then the law requires the Board of Health to put quarantine at any point at any moment it may be necessary; the president of the Board of Health, as
86 regards this, as in the case of Pensacola; we had to put a case at Lookout; all of this had to come out of the quarantine fund, and according to the act the president's salary, physician's, secretarys, and treasurers is directly charged to that fund, which is not included in that $21,000.00, which I alluded to.

By counsel:

Q. What percentage, about, of the time is the president of the board, & the secretary & treasurer of the board and of the collector of the board, are devoted to matters exclusively quarantine?
A. I will say the whole time of the president is taken up; that is, not absolutely every moment of the day, but he is always on duty like a general commanding an army.
Q. Well, in regard to the secretary and treasurer?

A. He is never absent from his post, whether he is at the quarantine station or here.

Q. The collector, does he attend to all of the collections?

A. Yes, sir; the whole of his time.

Q. Now, in regard to the attorney, what is his salary?

A. Is devoted to quarantine matters.

Q. What is his salary?

A. $50.00 a month.

87 Q. Doctor, in regards to the value of the materials that are used in disinfecting a vessel; what is the sulphur, that is to say, how much a pound?

A. Since I have been president of the Board of Health we have taken estimates from all the wholesale druggists and purchased it at wholesale prices, and my recollection is that it would be about 4 cents per pound; but then we have the expense of delivering it to the quarantine station. It might bring it up to 5 cents when the cost of carrying it is added.

Q. Now, carbolic acid?

A. We have purchased that at the lowest price; in fact, in 1878 several thousand gallons were sold, and we got it at $1.00 per gallon. We have been really furnishing it at below the price according to that circumstance; copperas from 1½ cents to 1¾ cents and 2 cents a pound. Sometimes the market is bare. Copperas contains a great deal of water crystalization, and may be bought for a little less.

Q. That must also be added to the cost of transportation?

A. Yes, sir.

Q. Making it cost about how much, approximately?

88 A. I should suppose about at the rate of 2 cents a pound, and the carbolic acid $1.25 a gallon. The board has never been in any position to buy large quantities—never had any funds beyond the immediate wants from day to day, except——

Q. In your administration, and from your knowledge previously as a member of the Board of Health, what is the cost of maintaining the quarantine station, the Miss. station?

A. I have here the detailed statement of the actual cost, which I would be glad to submit [in] evidence.

Counsel for def't offers in evidence document marked "A."

Q. You say it has been inadequate to keep up the quarantine station?

A. Yes, sir; Louisiana should have the quarantine station removed from the Riggolettes near to the river, in order to facilitate commerce. It would cost about $5,000.00. It should establish a fine quarantine station at the Atchafalya, which we would maintain there, and through memorials in that direction asking the Legislature for an appropriation of $5,000.00 each for each of those

89 stations, as I did for other matters; I asked for $10,000.00 for the Miss. quarantine.

Q. Something has been said about local sanitation. What is the fact in regard to the sum that is used or is noted for local sanitation?

A. The act of 1877, act No. 80, settles that question. The Board of Health is required to make out a budget of the year, and to apply to the city council for certain sums to pay the inspectors, the medical inspectors, and for disinfectants. During my term of service the amount appropriated has been inadequate—$10,000.00 for that purpose. The board has taken all its surplus funds to buy disinfectants and to supply all deficiencies at the quarantine station. The board has spent nothing outside of its special wants.

Counsel for defendant offers in evidence the report of the Board of Health, that portion of it material to the question of the quarantine of 1880 & 1881. Document marked "B."

90 Q. Doctor, how does the number of vessels passing through the Miss. quarantine—that is, our internal commerce—compare of late years with what it has been before?

A. Diminished one-half.

Q. Do you know what the reason for that is?

A. From the deepening of the mouth of the Miss. river and the complete change in commerce. Previous to the war about 2,300 vessels came through. I could give all those facts at any time, the complete record. The number of vessels entering last year was about 1,000. The whole tendency of modern commerce has been to build iron ships of great tonnage, and to reduce the sailing vessels, and to increase in size and diminish in number; hence our fees have been decreased in that respect, and will decrease more & more every year, and will become inadequate for the system.

By pl't'ff's counsel:

Q. The amount of tonnage has not increased, has it?

A. Yes, sir; it is increased. I can give you those facts. The amount of tonnage, not in respect to each vessel, but the aggregate, has increased.

By counsel:

91 Q. Dr., what condition is the Miss. quarantine station in? Please state what has been spent under repairs and so on at the Miss. quarantine in the last few years.

A. About between 7 & 8 thousand dollars, with the drugs, putting that in and the equipment of the beds; we found it in the most dilapidated condition, all wanting repairs.

Q. What is its condition now?

A. In very good condition; it is the best as far south as New York, as far as my knowledge goes.

Q. Dr., is there any other point material to this issue here that you wish to state?

A. I would like to make a brief statement with reference to the duties devolving on the Board of Health, in reference to quarantine at the mouth of the river and the States above, as would certainly close this port six months in the year but for the quarantine maintained here.

By pl't'ff's counsel:

Q. You think it is for the benefit of the whole commerce of the Miss. river?

92 A. I think so, sir; and we are obliged to keep up a quarantine at over a cost of 5 or 6 hundred miles, and supply every material out of this quarantine fund. In addition to that we protect the trade—internal trade of some 300 million, which would be destroyed but for this quarantine. The internal trade of New Orleans varies from 300 millions—from 2 to 3 hundred millions. This would be destroyed but for the quarantine through a large portion of the year; that the quarantine might be improved I would freely grant; that we need more money is a self-evident proposition. We should have our own quarters, and not be quartered upon the United States at the Reggolettes; Louisiana should have it; we should have our own quarantine station at Atchafalaya.

Q. In regard to the administration of the quarantine system at the Miss. river and the other stations, is it administered on an expensive plan, or an economical plan, or upon a medium plan?

93 A. Upon the most economical plan that I can conceive. There is not an account rendered of those stations that have not received the approval both of the president of the Board of Health and the finance committee, and all been submitted to the board. Not one dollar can be spent without a requisition, and its approval. We should have a corps and several more nurses with them. We should have a supply of stimulants and food, in case the cholera should come here at any time. You must recollect that a quarantine has to be like a sentinel, and we might have at any time ——. The case of the "Newemberg" had a case of small-pox aboard of her. We might, at any time, have a case of cholera or yellow fever. Possibly, though, a rigid quarantine, the ships had not been coming here with sickness, and we were spared what Pensacola had. If we had not a quarantine like them we would probably have had a loss of 15 million dollars.

94 Q. Are the salaries allowed the officers and employees of the Board of Health extravagant, moderate, or below what they ought to be?

A. I think they would be about. I think those at the Atchafalaya & the Riggolettes are not sufficient. Those of the Mississippi are very advant-geous salaries.

Q. The law provides for an assistant treasurer, at a certain salary, at quarantine station, will you state whether the board has ever had one there or not?

A. They had one there just before the war, and, perhaps, just after the war, but the president of the board thought that to- expensive, and then made the secretary here do all that—keep all the accounts. The secretary is required to be in his office a great part of the day, and his attention is taken up that way.

Cross-examination by Mr. LEOVY:

Q. You stated just now that $8,000 had been spent on repairs.

A. About that.

95 Q. Was not that $8,000 taken from the monies collected by these duties—that fund, the quarantine fund?

A. Not altogether. We get it from every source—recording the births and deaths.

Q. Births and deaths?

A. Yes, sir.

Q. And is not the Board of Health, besides being the Board of Health and having the management of the quarantine system, a board, also, for the preservation of the health of the city of New Orleans?

A. Of the entire State.

Q. But hasn't it certain defined duties, mentioned in the acts of 1870, which relate more particularly to New Orleans and the cleaning of the streets?

A. No, sir; they have nothing to do with the cleaning of the streets. That belongs to the Department of Improvements.

Q. But when you discover that the streets are in an unclean condition, is it not your business to invite the attention of the city authorities to that fact?

A. The board does that.

96 Q. Well, is not the president of the Board of Health also the recorder of births and deaths?

A. *Ex-officio;* not absolutely.

Q. Now, in this budget which is prepared by the city council to pay the expenses of the Board of Health, is any of that money given towards the payment of the president and other officers—the collector—the attorney?

A. Not a dime; not a cent.

Q. The four sanitary inspectors—does the city also pay for them?

A. The disinfectants; but the board has taken all the surplus funds, when we have been threatened with disease, and bought these disinfectants, and used them.

Q. Did you not, in a letter [to the] Speaker of the House of Representatives, state that the entire valley of the Mississippi was benefited by the quarantine system?

A. I did, sir.

Q. Is that not your opinion?

A. Yes, sir.

97 Q. Is not the health of New Orleans and commerce of this city greatly benefited by the quarantine system, in your opinion?

A. Yes, sir; absolutely dependent on it to a certain respect.

Q. Did you not, in view of what you believed to be necessary, appeal to the Legislature, through the Governor, for increased duties?

A. Small increase to make this diminution of the size—the number of ships—not increase the fees.

Q. Didn't the shipping interest of New O. protest against that course?

A. Yes, sir.

Q. Was it not the entire shipping interest?

A. I don't know.

Q. Well, as far as you know? I ask you if this is not the memorial and protest on the part of the entire interest?

A. I could not say without an examination of it.

Q. This petition here prepared and sent up by——

A. Mr. Whitney & Co. prepared it.

Q. Well, is it not signed by all the marine interest?

98 A. Not by all. A number of others didn't sign it.

Q. Do you know the signatures of any of those people?

A. No, sir.

Q. Well, you have seen the memorial?

A. I have seen the printed memorial.

Q. Well, I ask you if this is not the printed memorial?

A. I have not seen this copy, but I presume it is the same. These signatures I could not. Some said they didn't sign, and others did.

Q. That is the original document.

Admission.

Counsel for defendants admits that these are the genuine signatures, and that is the memorial that was presented to the Legislature.

Counsel for plaintiff offers in evidence the memorial marked "1."

Q. What firm did you say refused to sign?

A. I can't recollect. It strikes me Mr. York said something about it. On certain questions he stated that he had not signed

99 that, but somebody told me they signed it through an utter misapprehension of what the contents were, but I made no note of it.

By def't's counsel:

Q. Something has been said about the recordership of births & deaths. Is not your time taken up with the recordership of births and deaths?

A. I have my deputy that attends to it. I simply supervise it, and see that it is properly done; the diseases classified, and, in order to protect the city from quarantine, we publish, every week, a consolidated statement, and send it all over the world.

Q. Are any expenses of the recordership of births and deaths taken out of any other fund than the fund raised through that?

A. No, sir; on the contrary, we give the quarantine all we can.

Q. From that particular fund?

A. Yes, sir.

Q. Then I understand you to say that you borrow constantly

100 from the different other funds of the Board of Health money to supply the deficit in the quarantine fund?

A. Yes, sir, constantly; we sacrifice everything for quarantine.

Q. Does it ever happen the other way, that you borrow from quarantine fund to pay other outside expenses?

A. Not that I know of.

Dr. HERRICK, sworn for defendant.

Direct examination by Mr. ZACHARIE:

Dr. Herrick, you have heard the testimony of Dr. Jones and Dr. Finney?

A. Yes, sir.

Q. Do you corroborate the statements that have been made, so far as you know?

A. Yes, sir.

Admission.

It is admitted that if Dr. Herrick was interrogated in detail, as secretary and treasurer of the Board of Health, that he would corroborate the testimony of the previous witnesses.

Q. Doctor, something has been said about collecting fees
101 from vessels coming from Brashier or Morgan City around to New Orleans; do you know of any such cases?

A. I don't recollect of any cases where the fees have been collected. My understanding is that as a matter of courtesy the fees are not demanded of vessels leaving a port in this State and entering the quarantine, but I believe the law makes no exception.

The plaintiffs in this case exhibit a letter marked "C," which letter the witness identifies.

Cross-examination by Mr. LEOVY:

Q. You were speaking about fees on vessels from Morgan City, do I understand you to say they were never demanded?

A. I won't say never, but my impression is that it is not customary. The quarantine physician can answer the question better than I can.

Q. Have you read the act which authorizes the collection of that money.

A. I never read it except here this morning, and I find
102 nothing which makes an exception in (vessels) leaving the State.

Q. Have the board ever given you any instructions not to collect on vessels coming from Morgan City? Do you know if such resolution [was] passed by them?

A. I do not know.

Admission.

It is admitted by plaintiff in this cause that if Mr. I. N. Marks, chairman of the finance committee of the Board of Health, Col. A. W. Bosworth and Mr. Edward Booth, also members of that committee, and Mr. Henry Kohlbaause, book-keeper of the Board of Health, were testifying, would corroborate the testimony of the preceding witnesses, so far as their knowledge goes.

Agreement.

It is agreed that the plaintiffs in this case shall have a right of referring to the statutes and laws of the original 13 colonies

of the United States to show, prior to the adoption of the
103 *adoption of the* Constitution of the United States, by which quarantine fees for inspections and disinfections were collected & exacted.

Continued to Saturday, December 9th, 1882, for argument.

Civil District Court, Division "C."

MORGAN Co. *vs.* BOARD OF HEALTH. } No. 7001.

SATURDAY, *December 9th*, 1883.

Counsel for defendant offers in evidence document marked "10," offers report in so far as the quarantine is concerned, with the privilege reserved to each party of referring to these original documents during the argument in the supreme court, or other courts, without the necessity of copying them in the records, marked "11" and "12."

Testimony taken, by Consent, December 5th, 1882. *Filed Dec. 9th*, 1882.

Civil Dist. Court, Div. "C."

MORGAN'S LOUISIANA AND TEXAS R. R. & S. S. COMPANY, *vs.* THE BOARD OF HEALTH OF LOUISIANA. } No. 7001.

104 Signature of witnesses to testimony given by them is waived, by consent of counsel.

Captain J. W. HAWTHORNE, sworn.

Direct examination by H. J. LEOVY:

Q. Captain, you are the captain of the steamship "Excelsior" of the Morgan line?
A. Yes.
Q. How long have you been captain of the "Excelsior"?
A. This [is] the second voyage only, in this ship.
Q. She is a new steamship?
A. Yes.
Q. On what steamer were you captain before?
A. The Algiers.
Q. How long were you on her?
A. I made 95 voyages on her, six years.
Q. Is she one of the Morgan steamers?
A. Yes.
Q. Running between New Orleans and New York all the time?
A. Yes.
Q. No other place?
A. She did run from New York to Galveston several trips.
105 Q. With these exceptions the Algiers was engaged all the time in the trade between New York and New Orleans?
A. She was.

Q. On what vessels were you prior to that—3 or 4 years before?
A. The one prior to her was the Josephine.
Q. Texas steamers?
A. Yes; I have been on quite a number.
Q. How long have you been in command of steamers?
A. Since '66.
Q. Are all the Morgan steamers iron vessels?
A. All that I have ever been on.
Q. Are all the Morgan vessels plying between New York and New Orleans iron?
A. They are.
Q. How many are there?
A. Six.
Q. Are they constructed pretty much alike?
A. Well no, sir; 4 of them are alike, and the two last ones are alike.
Q. What is the main difference between the first four and the last two?
106 A. The only difference is in the size and some extra bulkheads and extra strength.
Q. The last two, then, have extra qualities?
A. Yes, sir; the two are the Algiers and Excelsior.
Q. Will you examine this plan marked "M," and tell me if it is like the Algiers and the Excelsior?
A. The forward hold, the after hold, the midship section, and the boilers are like the Texas ships. The Texas ships have two decks; the New York ships have three.
Q. With reference to the space in which the bilge-water was found, is not that substantially the same in all the steamers?
A. Yes, sir; they are alike. All the steamers are alike with reference to this space in which the bilge-water is found; that is between the frames and the bottom, between the flooring and the kelson.
Q. About what is the space between the flooring and kelson; how many inches from the flooring to the bottom?
A. About 18 inches.
107 Q. Is there not very generally bilge-water in that space of 18 inches?
A. No, sir; the water changes. The water runs through the water course next to the flooring of the vessel, and it is pumped out every four hours, nearly; if it is necessary we let water in so as to have the bilge of the ship clean.
Q. Is that always clean? Isn't there a time in which there is water there?
A. No, sir; we are changing it all the time, to keep the bilge sweet. It is necessary for the health of the vessel.
Q. Do you succeed in getting it pretty clean generally?
A. Yes, sir.
Q. How many of these compartments are there between the flooring and the kelson? (Counsel refers to Ex. M.) Do these marks represent the divisions?

A. These marks represent the frames of the ship; what you would call the ribs.

Q. How many of these divisions are there, about?

A. I don't know how many there are in the ship. I should think there was over a hundred.

Q. Is that flooring pretty close that covers these spaces?

A. Yes, that flooring is supposed to be tight.

Q. The air can't get in?

A. The air can get in, but not any water or dirt. It is made tight to keep the water and dirt from getting through the floor into the water course.

Q. With reference to this quarantine business, when you arrived at the quarantine station, you always stop there?

A. Always.

Q. Summer and winter?

A. All the time; obliged to stop there.

Q. What is the form that is observed by the quarantine physician.

A. Generally stop the ship; officer comes on board, pass the time of day usually, and comes in my room, takes a seat; asks me if the crew are all well. I report these, and he gives me a permit to come to the city and goes ashore.

Q. Does he examine the vessel at all?

A. Not at all.

Q. How long does this interview last?

A. About ten minutes, probably. He has to fill out in a book that he has the number of the crew, the number of days passage, and the health of the crew, and if there are any passengers (we have none, don't take any) then he gives me a permit to pass to the city.

Q. During the time that you were on the Algiers and the time you have been on the Excelsior has that been the uniform practice?

A. Yes, sir; with one exception.

Q. You mean a single exception?

A. Yes. There was only one voyage that he mustered the crew and called their names by the rolls and examined them.

Q. How long ago was that?

A. Last year. I don't know the date; but it was when the small-pox was North.

Q. So that for the last six years that has been the uniform practice with one exception?

A. Yes, sir.

Q. Simply to ask these questions and go through what you have described and give a certificate?

A. Yes.

Q. They never fumigated the vessel?

A. Never.

Q. What are the orders as to reporting sickness?

A. If we have sickness on board we have to report to the physician at the quarantine; and if they gave no orders I would be obliged to do it, because it would be a State prison offence.

Q. I only wanted to know the orders of the company.
A. Yes; those are the orders of the company.

Cross-examination by Col. ZACHARIE:

Q. Will you please state a little more fully what you mean by the water-course?
A. There is a- opening in every frame, so that water may pass freely through the frames the full length of the vessel.
Q. I understood you to say this is done for the purpose of preventing the bilge-water from remaining there—to prevent the water from stagnating—injuring health?
A. Well, it is certainly [as] necessary for the condition of the vessel as it is necessary for a man to wash his face. He might go on six months without washing.

111 Q. This bilge, the old bilge, is pumped out through pumps?
A. Yes, sir.
Q. And fresh water is pumped in through other pumps?
A. Yes; or let in by valves.
Q. Now, by using copperas and carbolic acid through the pumps, or through these valves, could not this carbolic acid and copperas be made to perm*ermi*ate the water through the frames the full length of the vessel?
A. Yes, sir.
Q. Then it is not impossible to disinfect that portion of the vessel through the frames?
A. Not in the least.
Q. Have you ever been on a vessel that has been infected with any infectious disease aboard?
A. Never have.
Q. I understand you to say that these openings will admit of the passage of the carbolic acid and the copperas so that the bilge water can be corrected through the pumps & the valves?
A. Yes, sir.

112 Q. Since you have been plying in *in* this trade between New York and New Orleans the city of New York has been comparatively healthy—freed from infectious disease?
A. Yes.
Q. You spoke on one occasion on which this quarantine officer mustered the crew by the rolls?
A. Yes, sir.
Q. Was there small-pox in New York at that time?
A. Quite a good deal in Jersey, not so much in New York city; most of the reports were from Jersey.

Redirect examination:

Q. During a great part of this time, when you arrived at New Orleans from New York, it was cold weather, was it not?
A. Yes.

Q. And you often left New York when it was freezing, and when you arrived here you went through the same forms as you did at mid-summer?

A. Yes, sir.

Q. Captain, *in* these frames are secured to angle lines at the bottom of the ship?

A. Yes, sir.

113 Q. These limber-holes are on top of these angle lines?

A. Yes, sir.

Q. These angle lines, about how deep?

A. About three inches.

Q. Now, then, the pumps can't take away any water below that three inches?

A. No, sir; not below that.

Q. Hence there is a certain amount of water in the ship always?

A. Always.

Q. That cannot be pumped out?

A. Yes, sir.

Q. Now, that drawing represents the ship on an even keel?

A. Yes, sir.

Q. Now, when the ship is by the stern—she is generally by the stern?

A. Yes, sir; generally about a foot and a half to three feet.

Q. By the expression "by the stern" you mean deeper in the water at the stern than the rest of the vessel?

A. Yes, sir.

Q. Now, when a vessel is in that condition, the water runs aft does it not?

A. Yes, sir; certainly.

Q. The result of it is that there is no water in the forward

114 part of the ship, except that that is below the angle line?

A. Below the angle line

Q. When the ship is in that condition will the pumps draw out of the ship the water that is in the forward part of her?

A. No, sir; you will have three inches of water there, sir, left in the ship.

Q. Now, from this deck (referring to Ex M), down along the side of the ship, are there not leading into the bilges scuppers or pipes for draining?

A. Yes, sir.

Q. That draw of the water from the main deck to the bilges?

A. Yes, sir.

Q. Consequently all the water from the main deck goes into the bilges?

A. Yes, sir.

Q. Do you not have a great deal of trouble with this bilge water?

A. Well, we never have had with ships that I have been on.

Q. Have you not had your ships constantly discolored with this bilge water?

A. Yes: that has occur-ed.

Q. What is that caused by?

115 A. Of course that is caused by the stagnation of water.

Q. If you can pump all the water out of the ship, there should not be any stagnant water in her.

A. Not if you could pump it all out.

Recross-examination:

Q. You don't mean to say, Captain, that there is three inches of water that remained in the bottom of the ship, between the angle lines, all the year round, for instance?

A. It would remain there, but we have fresh water in; it changes. But there is always about three inches of water there; we cannot keep it out.

Q. That is to say, when you open your valves the water will flow over these angle lines, and then the surplus will go over into the next one, and so on through the ship.

A. Yes.

Q. Then, would not this copperas and carbolic acid that is put into these valves permeate the ship in the same way along with the water?

A. Yes, sir, if it was put into the forward part of the ship. When we speak of these three inches of water, that is not all over
116 the bottom of the ship, but runs just like that (making a gesture).

Q. By the letting in of that water, charges with carbolic acid and copperas, it would go into these spaces, and the surplus would go over the limber.

A. Yes, sir.

By counsel for pl'ff:

Q. Every year these floors are taken up and the ships cleaned out th-roughly?

A. Yes, sir.

Q. What do we find in the bottom of the ships when that is done?

A. We generally find sand, rust, and just the settlement of the water, Mississippi water—anything of that kind; some little mud.

Q. Was there not taken out barrels of it?

A. Certainly; frequently.

Q. How long will it take to th-roughly clean a ship like the Algiers?

A. If we have time, it would take three weeks to properly wash it and sponge it up.

Q. You stated that that is done once a year.

A. Once a year.

By Col. ZACHARIE:

Q. Suppose a ship came here with yellow fever or small-pox,
117 and it was necessary to disinfect her, how long would it take to permeate the whole of that water course with carbolic acid or copperas?

(By Mr. LEOVY: Wouldn't that depend on the quantity?)

A. Have it through the water-course it would take a very short time.

Q. I understand you to say before that there is some portion of this bilge water that is not reached by the ordinary processes and remains until they clean at the end of the year?

A. Certainly; between the angle lines.

Q. That same water does not remain?

A. No, sir; we wash the ship out and of course that changes it.

By Mr. LEOVY:

Q. But you said a great deal remains, so that when you take the vessel over to be cleaned there is a great deal of dirt and sediment remains?

A. Yes, sir.

118 Captain RICHARD HILL, sworn for plaintiff.

Direct examination:

Q. You are captain of what vessel?

A. Gussie.

Q. How long have you been captain of the Gussie?

A. Since 1876.

Q. Between what ports is the Gussie plying now?

A. Between Havana, Indianola, and Texas.

Q. Between what ports?

A. I have made very few trips between Morgan City and Galveston.

Q. Have you made any trips between New Orleans and other ports.

A. Lately I have.

Q. How long a time did she run between Havana & New Orleans?

A. I think, about 8 years between Indianola and Galveston.

Q. Have you not made trips on the Gussie between New Orleans and Havana?

A. I never made a trip on the Gussie between here and Havana, but I have come from Havana to New Orleans a good many times.

119 Q. Can you remember about how many trips you have made?

A. I suppose about a dozen.

Q. What steamer were you on before [the] Gussie?

A. A few months on the Hewes.

Q. Same business?

A. We ran to Texas.

Q. Did you not sometimes come from Havana to New Orleans on the Hewes?

A. Yes, sir.

Q. Then you know all about fumigating vessels at the quarantine stations?

A. Yes.

Q. When did you make your last trip from Havana to New Orleans?

A. As near as I can remember, it was this last August on the Gussie.

Q. Will you state what is the mode of fumigating a vessel at the quarantine on the Mississippi?

A. By putting 2 kettles, one in each hold, those of our elevators, and in the cabin.

Q. Describe those holds.

A. A kettle is put in the after hold, the forward hold, and one in the cabin.

Q. What is the material with which they fumigate?

A. Sulphur.

120 Q. During the last summer, did they use anything else than sulphur?

A. They used carbolic acid in our cabins, between the mattresses, and in the clothing of the crew.

Q. Every trip?

A. Yes.

Q. Nothing used but carbolic acid and sulphur?

Q. Never seen anything else.

A. How much did they use on each trip?

A. I suppose about 5 to 5½ pounds in each one of the pots.

Q. Do you know how much 5½ pounds of sulphur is?

A. I think each pot is about the size of my hat.

Q. You know how much 5 pounds is about?

A. That is just about as far as I can guess.

Q. You say they used 3 pots of about 5 pounds each?

A. Yes, sir.

Q. It was burned?

A. It was burned in the pot?

Q. He kept you there till they burned that?

A. Yes, sir.

121 Q. How long?

A. Until they opened the hatches?

Q. How long was that?

A. Well, about 3 or 4 hours.

Q. Were you kept down there all that time?

A. Yes, sir; ten days.

Q. Did they repeat that more than once?

A. Only once.

Q. Once during the ten days—the first day?

A. No, sir; about the third day.

Q. How much carbolic acid did they use?

A. Might use a gallon.

Q. Where was that placed?

A. Well, it was used in the cabin between the mattresses, through the sailors and crew clothing, and the forecastle, and sprinkled about the clothes.

Q. Was it ever used in large quantities so as to descend and run where this bilge water was?

A. No; that would require a barrel to do it; our ship is constructed different from that; it would simply run in a small

122 gutter from one end to the other; wouldn't run at all.

Q. Examine this plan marked "M," and state whether your vessel is constructed like that.

A. There is a gutter under the frame forming the keel in the "Gussie."

Q. In your ship the bilge-water would be in that gutter beneath the framework?

A. Yes.

Q. Have you ever seen the carbolic acid so distributed, and in sufficient quantities to reach the bilge-water; do they ever put carbolic acid in such shape as to destroy any germ in the bilge-water?

A. I hardly think so, simply because we have no bilge-water in the ship.

Q. Did you ever see them put any carbolic acid in the bilges?

A. No, sir.

Q. Did they ever put any carbolic acid below the main deck?

A. No, sir.

Q. Did you ever see them pour the carbolic acid in the

123 vessel at all, except as you have stated, between the beds and in the manner you have already stated?

A. Not down here; I have not.

Q. Have you seen them so use this carbolic acid so as to destroy any poison that may have existed in the bottom of your vessel?

A. No, sir; I have not.

Q. The most they used was how much?

A. As I told you before, I think little less than a gallon.

Q. Was any sulphur ever put in the boiler, or coal-bunker space?

A. No, sir.

Q. Did they ever put any in between decks?

A. Yes, sir; we have on one or two occasions.

Q. Whereabouts?

A. One in the forward, and one in the after hold, at the bottom, on the floor, & one between decks.

Q. Did they ever put any in the fore-peak?

A. No, sir.

Q. In the after-peak?

A. No, sir.

Q. Of either sulphur or carbolic acid?

124 A. No, sir.

Q. Is there not a water-tight iron bulkhead between the forward hold and the coal bunker?

A. Yes, sir.

Q. That separates the forward hold from the boiler space?

A. Yes, sir.

Q. Is there not another bulkhead at the after end of the boilers which separates that space from the after hold?

A. Yes, sir.

Q. Is there any means by which the fumes of the sulphur in the forward or after hold could reach the boiler space?

A. No, sir; not as I know of.

Q. How long is it from the bulkhead to the after end of the engine?

A. I suppose about 60 feet.

Q. That space extends entirely across the ship?

A. Yes, sir.

Q. The entire depth of the ship?

A. Yes, sir.

Q. In which was no sulphur was ever burned?

A. No, sir.

Q. Nor carbolic acid used?

A. No, sir.

125 Q. The carbolic acid was only used in your cabin and in your forecastle?

A. Yes, sir.

Q. Sprinkling it on the clothes? What did they sprinkle it with?

A. Through a bottle and syringe.

Q. How large are these pots?

A. As near as I could judge, about 15 inches in diameter.

Q. Have you weighed 5 pounds?

A. As near as I could judge.

Q. Have you not weighed 5 pounds of sulphur?

A. Yes.

Q. Did you not weigh 45 pounds of sulphur?

A. Yes, sir.

Q. How large a box did it take to hold it?

A. 11x11x13 inches.

Q. When they burned this sulphur they closed the hatches of the upper deck?

A. Yes, sir.

Q. Are these hatches air-tight?

A. No; they are not exactly air-tight; but we put our tarpaulins over them.

Q. Are they air-tight then?

A. Not exactly; but they are pretty tight though.

126 Q. Are the openings around the engine tight?

A. No; not quite though.

Q. Are they not open?

A. There *is* 2 doors and a hole.

Q. Are these doors shut?

A. No; they were open.

Q. Nothing to prevent the fumes of the sulphur from goin- out of these doors?

A. Not at all.

Q. How is your ship trimmed usually?

A. Well, I think, call it about 10 inches by the stern just now—that is the way we came from Havana last—10 or 11 inches by the stern.

Q. Has the quarantine physician ever placed any sulphur, any carbolic acid, or copperas in the bilges?

A. No, sir.

Q. Never have attempted to do so?

A. No, sir.

Q. Has there ever been any attempt to clean in any shape the bottom of the ship at the quarantine station?

A. No, sir.

Q. Nor in the fore-peak nor the after-peak?

A. No, sir.

127 Cross-examination:

Q. I understood you to say, Captain, in your examinatin-in-chief, you had no bilge-water?

A. Exactly; we have none, except back of there.

Q. How much have you there?

A. We can take out except within an inch.

Q. Now, I understand that above these bilges there is a perfectly tight flooring, isn't there?

A. Yes, sir.

Q. So that the only escape for the bilge would be by the roll of the vessel.

A. That is all.

Q. Did you have valves by which you let water in to wash out the bilges?

A. We have a valve to do so. When I come in the river here I put fresh water in.

Q. Where did you say these doors and openings lead from?

A. From between decks into the engine-rooms.

Q. They remained opened?

A. Yes, sir.

128 Q. And you say that the hatchways with the tarpaulins over the after hold are pretty tight, enough to shut in the fumes of the sulphur.

A. Yes, sir.

Q. And over the engine-room?

A. Don't have none there; can't close it.

Q. Are you certain that they only burned sulphur in that vessel once?

A. Only once at each quarantine.

Q. Wasn't it more than that; each ten days?

A. No, sir.

Q. Didn't the quarantine physician visit you almost daily?

A. Well, not daily, but he would come aboard 5 or 6 times during the time that we were lying there.

Q. You had no disease aboard?

A. None.

Q. You simply came from an infected port?

A. Yes, sir.

Q. Have you ever been on a vessel in quarantine when she actually had disease aboard?

A. Never, sir.

Q. Could they have used copperas or carbolic acid along with the bilges without your knowing it?

129 A. I don't think——

Q. You are not certain, however. You are not always on duty?

A. I am always on duty when the doctor is aboard.

Q. Suppose the doctor came aboard when you was not on watch?

A. I am on deck.

Q. Isn't it possible he might come aboard when the first officer is in charge?

A. Don't make any difference; I am on deck when the officer arrives.

Q. In the ten days?

A. I am on board when the doctor comes to meet me.

Redirect examination:

Q. When they put that sulphur down in the forward and after hold, was there any way in which that sulphur could reach the space around the boilers and engines?

A. It would have to come out of the forward hold and go——

Q. What is to prevent it going out of the doors?

A. Well, it might go on deck.

Q. When it got on deck it was out.

A. Of course.

130 Q. These openings around the engine frames are always open?

A. Yes, sir.

Q. Have you ever been down the boiler space when they were fumigating?

A. No.

Q. Is it possible that the quarantine doctor could come aboard of your ship and put any sulphur into your bilges without you knowing it?

A. I was never told by any officers that go down with him.

Q. Wouldn't you have found out?

A. I think they would have told me.

Q. Wouldn't you have found it out?

A. No.

Q. Is it possible for these officers to come aboard of your ship and fill your vessel with a solution without your knowing it?

A. No, sir.

By Mr. ZACHARIE:

Q. That I understand that whenever anything of this kind was done the 1st officer went down below decks with the quarantine physician?

A. Yes, sir.

Q. You didn't see that officer?

131 A. No.

Q. Do you know, of your personal knowledge, that there was no carbolic acid?

A. I inquired from the officers, and they told me no.

Mr. A. H. HUTCHINSON.

Direct examination:

Q. When a number of these steamers were constructed you were at the North superintending?

A. I have superintended the construction, repairs, and cleaning them up.

Q. Can you name some of the vessels?

A. Well, I saw most of them, during the time they were being constructed, at different stages.

Q. You are, then, familiar with the construction?

A. Yes.

Q. Was that the case with the Excelsior?

A. I have been aboard of her twice.

Q. Have you often seen the vessel when in dock here?

A. Yes, in every case.

Q. You mean this past year?

A. Since '53.

Q. Have you made it your business to go over and occa-
132 sionally examine them while they are being repaired?

A. Yes, sir.

Q. Examine this Ex. "M" and explain some of the points about which we have been speaking. Please state what is the meaning of these ribs and the divisions between. Don't these correspond with ribs of wooden vessels?

[A.] Each one of these lines represent an iron frame, which extends across the bottom of the ship; these frames extend crosswise; then there are other frames that extend the whole length of the ship longitudinally; these frames are probably four on each side of the kelson, making eight in all, which divide these compartments up into a great many.

Q. About what depth are they?

A. They vary from 18 inches to 24.

Q. About how many of these compartments are there—divisions?

A. There are certainly not less than 300 divisions—300 compartments; I mean in both ways.

Q. Will you explain how it is possible for bilge-water to
133 remain in these vessels, and where, without further questions?

A. The water, small portions of the water, remain behind the angle lines, for the reasons that there is no way for the water to pass underneath them, and, as a result, objects collect in there of all description; the presence of this water creates what is called bilge-water, which is to be found in all our ships and in all vessels that I have ever seen, and almost invariably in a rough passage when this sediment & filth in the bottom is agitated by the rolling of the ship, the foul vapor arising from this bilge-water will discolor the

paint all over the ship, and is perceptible by its smell whenever the ship is entered.

Q. Isn't there more of that bilge-water in the stern than forward?

A. All vessels usually being deeper by the stern bow, this water collects in the after part of the ship, and here it cannot be reached by the pumps; for this reason, I have never seen a vessel
134 that was entirely free of bilge-water.

Q. State how it is when the repairs are made at the end of the year.

A. I would state that there is a wooden floor; on top of the frames is a double floor made tight for the purpose of preventing as much dirt as possible from going into the bilges; but in spite of this precaution the dirt gets in by the scuppers or tin pipes which lead from the upper decks, and in the working of the ship in bad weather at sea these floors open and let the dirt through. What is called the fore-peak of a ship is a water-tight iron bulkhead placed entirely above the vessel, and from 15 to 20 feet from the bow, in some cases more—30 feet; this space (the vessel being very sharp) is very small, and in its lower portion is impossible to reach. So much so that even in our annual cleaning there are portions of it that we cannot reach. The same applies to the bulkhead in the after part
135 of the ship, where the vessel is sharp near the sides is so little that even a boy can't get down between the frames to clean out the ships; and the filth that accumulates there remains for years. I have seen it in ship 10—12 years old where the plates were taken off and the filth for the first time exposed.

Q. State how much dirt is taken out at the annual cleaning.

A. At the annual cleaning of the ships there are tons of dirt taken out of the bilges. This dirt is composed of sand, mud, sugar, molases, tallow, brine, making as filthy a mass as is possible to imagine. It requires from 3 to 5 or 6 weeks to thoroughly clean one of the ships, depending entirely upon the size. To do this the entire wooden floors are taken out; all the bulkheads, all the compartments exposed. They are then thoroughly scraped. When scraped and coal-tarred, the wooden floors are then put back. To explain how water remains in the bottom of a ship, we very frequently
136 damage cargo in consequence of the excessive rolling of the vessel, the few inches of water that remain in the bottom of a ship swashing back and forth with so much force as to be driven through the floors and damage the cargo that has stood on this floor. I have known our New York ships arrive here with a cargo of assorted merchandise, and when we reached the lower tiers in the after end of the hold they were badly damaged from 6 to 7 inches above the floor, and that no water remained on the floor. This water had been forced through the floors by the rolling of the ship, and yet every precaution is taken to prevent this. Sounding tubes are placed in the hull of the ship, running to the upper deck, through which the officers are able to sound and ascertain what water there is in the bottom of the ship, and it is by these sounding tubes that they control their pumps; but when the vessel is rolling, this
137 water washing back and forth, it is impossible to pump it out,

as the pumps are generally sucking, the water being thrown away from the pumps by the rolling.

Q. How much carbolic acid would it require to disinfect the bilges; you have seen the carbolic acid and used it often; take some barrels?

A. Take a ship 300 feet long and 40 feet wide, the average width would be about, probably, 30 feet in the bottom of the ship; hence that would represent a space 300x30x (about) 18 to 24 inches deep, which would hold a great many hundred gallons of the solution; I don't know how many.

Q. Would it not be difficult for that solution to reach the bilge through and through?

A. No; the solution can be run into the bilges, but it will take an enormous quantity to fill them up.

Cross-examination:

Q. That I understand you to completely cleanse, disinfect, these bilges, that it would be necessary in the first place to take up
138 the flooring, which rests above the frames?

A. Yes, sir; often that won't even do, then we have to take up the plates to get at this or that; we have to take the plates off.

Q. Then it would be practically impossible to disinfect that portion of a ship?

A. I have always said it would be practically impossible to disinfect a ship, for the reasons that it will take weeks of time, and the ship would literally have to be torn to pieces.

DOCUMENTS OFFERED IN EVIDENCE IN FOREGOING TESTIMONY.

Document marked "A," offered in Evidence by Defendant. Filed Dec. 2d, 1882.

Expenditures for Quarantine Purposes.

139 Year.	At Miss. Station.	At Riggslettes Station.	At Atchafalaya Station.	At Control Office.	Total expenditures for quarantine.	Total receipts from all quarantine stations.
1869	15,019 85	2,914 32	1,474 60	6,254 95	25,690 72	28,545 10
1870	13,201 28	2,543 21	2,259 50	6,679 18	24,683 17	24,910 10
1871	14,285 19	1,940 64	1,308 10	7,546 65	25,080 58	25,119 50
1872	12,402 84	895 35	981 00	6,437 59	20,716 78	21,671 10
1873	13,493 73	1,557 08	699 10	7,103 58	22,853 4–	21,961 34
1874	11,557 10	380 85	190 00	7,080 24	19,208 19	20,003 25
1875	9,598 59	1,347 97	1,320 00	13,775 83	26,042 39	13,801 50
1876	14,038 97	662 32	5,180 00	6,543 10	21,296 19	20,061 17
1877	9,314 71	1,387 66	847 50	6,519 94	18,069 81	15,471 45
1878	13,858 50	929 19	711 91	8,720 17	24,220 15	21,024 50
1879	9,869 21	1,599 23	1,134 49	10,104 89	22,707 82	18,315 25
1880	14,388 91	1,720 17	813 83	8,294 84	25,217 75	22,046 50
1881	17,674 47	1,536 93	690 00	7,272 30	27,273 70	18,555 50
1882*	10,149 39	1,526 95	460 00	7,529 81	19,665 65	13,486 50

*For ten months.

140 Document marked "B," offered in evidence by counsel for pl'ff, filed Dec. 2d, 1882, is offered in the original form.

Letter marked "C," Offered in Evidence by Plaintiff. Filed Dec. 2d, 1882.

OFFICE OF BOARD OF HEALTH,
Corner Royal and St. Louis Streets, State of Louisiana,
Joseph Jones, M. D., President,
S. S. Herrick, M. D., Sec. & Treas.

NEW ORLEANS, *Sept. 9th*, 1882.

Messrs. C. A. WHITNEY & Co.

GENTLEMEN: Our collector reports your refusal to honor a recent draft of $20.00 for fumigation of the S. S. Gussie, from Havana. We have just received a similar draft from the S. S. Morgan. I am instructed by the president of the board to say that if those draf-s for fumigating are not paid, it will be necessary to notify the
141 quarantine physician to cease the fumigation of the steamers of your lines, and to have the cargo-s discharged into the U. S warehouse, and detained for such time as the Board of Health may find necessary, to effect disinfection by exposure to the air.

Respectfully, y'r ob't s'v't

(S'g'd) S. S. HERRICK, M. D.,
Secretary, &c.

Statement of Dr. Finney. Filed Dec. 4th, '82.

MORGAN'S R. R. Co. *vs.* BOARD OF HEALTH. } No. 7001. C. D. C.

NEW ORLEANS, *Dec. 9th*, 1882.

This is to certify that every vessel at the Miss. river quarantine station for the purpose of disinfection and fumigation are subjected to treatment with sulphurous acid gas, carbolic acid, and sulphate of iron.

142 The quantity of each of these materials used depends upon the size & sanitary condition of the vessel, varying from 75 to 300 or more pounds of sulphur, one to five gallons of carbolic acid, & 25 to 150 pounds of sulphate of iron. In some cases, vessels have been disinfected and fumigated as many as five and six times during the same period of detention. The usual strength of the carbolic acid solutions used is one part to 50 of water. The size of the iron pots used in burning the sulphur varies from four to twelve gallons capacity.

(Signed) J. F. FINNEY, M. D.,
Resident Physician Miss. River Quarantine Station.

Cross-examination waived.

(Signed) LEOVY AND KRUTTSCHNITT,
Att'ys for Pet'rs.

NOTE.—The exhibit marked "M," referred to in the testi-
143 mony and offered in evidence by counsel for plaintiff, is annexed to this transcript in its original form.

Document marked "10," offered in evidence by counsel for defendant, also is offered in its original form.

The documents marked "11" & "12," offered in evidence by counsel for defendant, it is agreed to go up in their original form.

Case Submitted. Extract from the Minutes of Division "C."

C. D. C., Div. "C."

DECEMBER 9TH, 1882.

Present: Hon. F. A. Monroe, judge:

MORGAN'S LOUISIANA AND TEXAS R. R. & S. S. Co.
vs.
THE BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 7001.

This case, continued to this day, was called. Present: Counsel for both parties. When, after hearing additional evidence &
144 argument of counsel, the case was submitted with leave to file briefs within one week.

Reasons for Judgment. Filed January 2d, 1883.

Div. "C," Civil District Court for the Parish of Orleans.

MORGAN'S LA. & TEXAS RAILROAD COMPANY
vs.
BOARD OF HEALTH. } No. 7001.

Plaintiff owns a number of steamships, which are engaged in the business of commerce between the port of New Orleans and various other ports in the United States and elsewhere. Under the quarantine laws of this State each of these ships entering the port of New Orleans through the mouth of the Mississippi river is required to report at the quarantine station established by the State authorities at the latter point for the purposes of inspection, and, if necessary, of disinfection.
145 When the ship hails from a port in which yellow fever does not usually prevail, and in which no contagious or infectious disease is reported to exist, and has not touched at any such port, and has not come in contact with any vessel having any contagious or infectious disease on board, and there is no contagious or infectious disease actually on board such ship, and she is not in a foul condition, the master, upon payment of the sum of thirty dollars, is furnished by the health officers at the station in question with a "permit" to proceed with his ship to the city of New Orleans. When, however, the ship comes from a port in which yellow fever usually prevails, or in which some contagious or infectious disease is reported to exist, or has touched at such ports, or has come in contact with some vessel having such disease on board, or actually has such disease on board, or is in a foul condition, she is detained at the station, and subjected to a process

of disinfection by fumigation and other methods, after which,
146 and upon payment of $30, mentioned above as the charge for the inspection, and of an additional sum of from $20 to $25 as the charge for disinfection, the "permit," or certificate, is given, and the ship is allowed to enter the port. The particular statute under which the fee or charge of $30 is exacted is the act No. 69, of 1882, which reads as follows:

"SEC. 1. Be it enacted, etc., That the resident physician at the quarantine station on the Mississippi river shall require for every inspection and granting certificate the following fees and charges: For every ship, thirty ($30) dollars; for every bark, twenty ($20) dollars; for every brig, ten ($10) dollars; for every schooner, seven dollars and 50 cents ($7.50); for every steamboat (tow-boats excepted), five ($5) dollars; for every steamship, thirty ($30) dollars.

"SEC. 2. That the Board of Health shall have an especial lien and privilege on the vessels so inspected for the amount of said fees and charges, and may collect the same, if unpaid, by suit
147 before any court of competent jurisdiction, and in aid thereof shall be entitled to the writ of provisional seizure on said vessels."

By virtue of other provisions of law, which it is unnecessary to quote, the Board of Health requires the payment of $20, or $25 additional, as the cost of disinfection when such treatment is considered necessary. The object of the present suit is to perpetually enjoin the collection of these charges, and to restrain the Board of Health from detaining the plaintiff's vessels because of their non-payment, or from enforcing the quarantine regulations as against said vessels in a more oppressive manner than against others. The plaintiff alleges that the laws which are, in so far as they purport to authorize the exaction of the fees and charges in question, are null and void, in that they contravene—

1. Article 1, section 8, paragraph 3, of the Constitution of the United States, which provides that—

148 "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

2d. Art. 1, section 10, paragraph 3, which provides that—

"No State shall, without the consent of Congress, lay any duty of tonnage."

3. Article 1, section 9, paragraph 6, which provides that—

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter clear or pay duties in another."

It is remarkable, in view of the fact that the convention which adopted the Constitution of the United States distinctly determined,

after the most elaborate and earnest discussion, that the States
149 should not be allowed, without the consent of Congress, to
levy duties of tonnage for any purpose whatever, that it should still be considered a subject for discussion as to whether such duties may not be imposed for the support of a police or quarantine regulation established by a State for the protection of the health of its citizens.

In order to show how clearly this whole subject was placed before the convention, I quote the following passage from the History of the Constitution of the United States by Judge Curtis, vol. 11, p. 370. He says:

"In order to vest the supervision and control of the whole subject in Congress, it was further provided that no State, without the consent of Congress, shall lay any duty of tonnage. An exception, proposed by some of the Maryland and Virginia members (of the convention which adopted the Constitution), with a view to the
situation of the Chesapeake Bay, illustrates the object of this
150 provision. They desired that the States might not be restrained
from laying duties of tonnage for the purpose of charging harbors and erecting light house. It was, perhaps, capable of being contended that, as the regulation of commerce was already agreed to be vested in the General Government, the States were restrained by that provision from laying tonnage duties. The object of the special restriction was to make this point entirely certain, and the object of the proposed exception was to divide the commercial power, and to give the States concurrent authority to regulate commerce for a particular purpose; but a majority of the States considered the regulation of tonnage an essential part of the regulation of trade.

"They adopted the suggestion of Mr. Madison that the
151 regulation of commerce was in its nature indivisible and
ought to be whol-y under one authority. The exception was accordingly repealed."

It is certainly capable of being contended, with great force of reason, with reference to the particular exception proposed in the convention, that the clearing of harbors and the erection of light houses might be regarded as a service rendered to commerce, and that in paying therefor the commerce of the country would merely pay for service rendered. The conclusion of the convention, however, appears to have been that the power to improve compulsory charges or exactions for any purpose or upon any pretext involved the power to regulate commerce, and that this power ought to be vested in the General Government and be undivided.

They, therefore, refused, as we have seen, to adopt into
152 the Constitution an exception permitting the States to lay a
duty of tonnage to clear harbors and erect light houses. They did, however, adopt a provision, which has the appearance of an exception to the clause vesting in Congress the power to regulate commerce—I refer to paragraph 2, sec. 10, art. 1, which provides that—

"No State shall, without the consent of Congress, lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imports, laid by any State, or imports or exports, shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress."

It is conceded that the inspection laws thus referred to are such laws as may be enacted for the inspection of merchandise, and that the imposts or duties in question are such as may be imposed
153 upon merchandise. This exception, therefore, in no way affects the prohibition contained in the very next paragraph of the same article, to the effect that "No State shall, without the consent of Congress, lay any duty of tonnage."

Since, the duty of tonnage is levied upon the ships, and is not an impost or duty upon merchandise imported or exported. The exception is attached to the prohibition to which it relates, whilst the prohibition against the laying of duties of tonnage stands alone and without exception. Nor can this exception be held to affect the power of Congress to regulate commerce. In "Gibbon *vs.* Ogden," 9 Wheat., 205, the Supreme Court said:

"The object of the inspection laws is to improve the quality of article produced by the labor of the country, to fit them for exportation, or it may be for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of com-
154 merce among the States, and prepare it for that purpose."

So in the case of "Brown *vs.* Maryland," 12 Wheat., 420, it was said:

"The tax or duty of inspection is frequently, if not always, paid while the article is in the bosom of the country; * * the exception was made because the tax would otherwise have been within the prohibition."

Considering the language last above quoted, it occurs to the mind at once that even if this exception should have the effect of leaving with the States the power to regulate commerce for the purpose of the inspection of merchandise, this results solely from the fact that said exception is embodied in the Constitution; but, when we further consider the limitation to which the exception is subject, it becomes more and more manifest that it can have no such effect, since, in the first place, it is provided that the net revenue of all
155 such imposts shall be for the use of the United States Treasury, thus confirming the interest of the State in the matter to the actual cost of the inspection, and guarding against the use of the power referred to as a means of regulating commerce; and, in the next place, it is provided that "all such laws shall be subject to the revision and control of the Congress," so that if, perchance, inspection laws were used for the purpose of regulating commerce, Congress could at any time remedy the evil by proper legislation.

It may safely and properly be said, therefore, that there is not to be found upon the face of the Constitution a single exception to the rules: that Congress alone has power to regulate commerce, and that the States, without the consent of Congress, have no power to levy duties of tonnage.

After the adoption of the Constitution, it being conceded
156 that the States had not divested themselves of the power to establish and enforce their own health and public regulations, and there appearing a possibility that these regulations might interfere with, or be interfered with by, the laws passed by Congress for the regulation of commerce, certain acts were passed by the Congress, concerning which Chief Justice Marshall used the following language, to wit:

"The acts of Congress passed in 1796 and 1799, empowering and directing the officers of the General Government to conform to and assist in the execution of the quarantine and health laws of the State, proceed, it is said, upon the idea that these laws are constitutional. It is undoubtedly true that they do proceed upon that idea, and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgment
157 that a State may rightfully regulate commerce with foreign nations or among the States, for they do not imply that such laws are an exercise of that power, or enacted with a view to it; on the contrary, they are treated as quarantine and health laws, are so denominated in the acts of Congress, and are considered as flowing from the acknowledged power of a State to provide for the health of its citizens. But as it has appeared that some of the provisions made for that purpose and in virtue of this power might interfere with and —— by the laws of the United States made for the regulations of commerce, Congress, in that point of harmony and conciliation which ought always to characterize governments standing in the relation which that [of] the Union and those of the States have to each other, has directed its officers to aid in the execution of
158 these laws, and has in some measure adopted its own legislation to this object by making provisions in aid of those of the States. But in making those provisions the opinion is unequivocally manifested that Congress may control the State laws so far as it may be necessary to control them for the regulation of commerce." 9 Wheat., 205.

Referring to the act of 1799, mentioned in the foregoing opinion, we find that it contains the following section and proviso, to wit:

"The quarantine and other restraints which shall be required by the health laws of any State, or pursuant thereto, respecting any vessels arriving in, or bound to, any port or district thereof, whether from a foreign port [or] place, or from another district of the United States, shall be duly observed by the collectors" (and other Federal officers):

159 "Provided, That nothing herein shall enable any State to collect a duty of tonnage or impost without the consent of the Congress of the United States."

The insertion of this proviso was unnecessary perhaps, as the Constitution itself contains the same prohibition; but it may have been through that the language of the act would be construed as implying the consent of Congress to the carrying of tonnage to support quarantine, and the insertion of the proviso is significant as showing that Congress (at that time composed of men some of whom had framed the Constitution) entertained no doubt that whilst the States might without the consent of Congress enact and enforce their health laws, they could not levy duties of tonnage to defray the expense of the same. It was also found upon the adoption of the Constitution that there was in force in
160 every State a system for the regulation of pilotage, which system was adopted by Congress by act of August 7, '89, and given the same validity as if its provisions had been specially enacted by Congress. If, therefore, any duty of tonnage for pilotage or half-pilotage is collected, such collection is made with the consent of Congress. Again, in many ports wharves have been constructed, either by private or municipal enterprise, and all vessels landing at such wharves are charged a certain amount, either so much per ton or a fixed sum for vessels of a particular description, for the use of the wharves, and the peculiar and artificial facilities afforded by them, upon precisely the same principle that charges are made by proprietors of dry-docks for accommodations to vessels, except that the charge
161 for wharfage upon the banks of navigable streams cannot exceed a reasonable compensation.

So in the case of port wardens. If the master of a vessel permits them to render a service to his vessel the port warden is entitled to his compensation. But I think it the correct principle, as stated by the learned counsel for plaintiff in his brief, that any charge imposed by the State upon a vessel engaged in commerce, for which no equivalent is given, is a duty of tonnage, whether such charge be measured by the tonnage of the vessel, or imposed as a fixed sum upon all vessels of a particular character; and, beyond this, I am satisfied that the States have no authority to impose upon vessels services which are neither needed nor desired, and exact payment therefor of sums fixed by the States themselves. In the case at bar, for instance, it appears, from the testimony, that the fumigation of a vessel
162 for the purposes of disinfection destroys more or less of the roaches and other vermin by which ships are sometimes infected, and it may be said that the destruction of such vermin is advantageous to the ship, but it would be difficult to demonstrate upon what principle of law or common sense the State of Louisiana should be permitted, against the wishes of the owner, but at his expense, even to destroy vermin on his vessel, unless in furtherance of some police or health regulation; but the very basis of the power which the States possess to adopt and enforce such regulations is the inherent and inalienable right of self-protection, and the basis of the argument of the defence in this case is, that the State has exercised this power to establish quarantine for the protection of her citizens; neither the power, therefore, nor the manner of its exercise in
163 this case offered the shadow of a pretext for the claim that vessels quarantined against the wishes of the owner are thereby

rendered a service for which a sum of money arbitrarily fixed by the State may be exacted.

The point upon which counsel for defendant appears to place most reliance is that the charges *are* here objected to are not duties of tonnage, because they are not proportioned to the tonnage of the vessels taxed, but are fixed with reference to the class or character of the vessels. If, as we have seen, no service is rendered to the vessel, there exist no basis for the charge whether it be a duty of tonnage or not; but the proposition that a steamship of three thousand tons can be forced to pay $30 towards the support of our health and quarantine system, provided the charge is imposed without
164 the use of the word tonnage, and yet that nothing could be collected for so excellent a purpose, if the charge is imposed at the rate of one cent per ton, it seems to me is disrespectful to the Constitution of the United States. This same point has, however, been suggested before, and was disposed of by Chief Justice Chase.

"It was not only a *pro-rata* tax which was prohibited, but any duty on the ship, whether a fixed sum upon its whole tonnage, or a sum to be ascertained by comparing the amount of tonnage with the rate of duty." 6 Wallace, 33. In this same case, in referring to the question of the right of the port warden to collect fees without the condition of specific services, upon the theory that it was an advantage to commerce that such officers should be at hand, the court said:

"It may be true that the existence of such a body of men
165 is beneficial to commerce, but the same is true of the government of the State, of the city government, of the courts, of the whole body of public functionaries. If the constitutionality of the charge, for the benefit of the master and wardens, can be maintained, upon the ground that it secures compensation for services, it is difficult to perceive upon what grounds the constitutionality of any State law imposing taxes for the benefit of the State government upon vessels landing at its ports can be questioned." 6 Wall., 33. See, also, 12 Wall., 218; 20 Wall., 580; 31 An., p. 65; 34 An., 703.

An intervention was filed in this suit by the attorney general, on behalf of the State, in which it is alleged that the plaintiffs seeking to have annulled laws "whereby revenues are raised and provided for the maintenance and support of the quarantine system and service of said State for the prevention of the introduction of contagious and infectious diseases into the State of Louisiana,"
166 etc.; all of which is undoubtedly true, and exhibits sufficient interest on the part of the State to justify the intervention. It also serves to illustrate more clearly the conflict between the laws referred to and the Constitution of the United States, since it is thus judicially admitted and averred by the State of Louisiana that she derives a revenue by the injunction of charges [on] all vessels entering the mouth of the Mississippi river, wherewith she supports her quarantine system and service, whilst the laws themselves and the evidence in this case show that those charges are imposed with the

sole purpose of raising this revenue, and without undoing or the intention to render any service whatever to the ships charged.

That the quarantine service is ably and intelligently conducted there can be no doubt, but this affords no reason for requir-
167 ing that it should be supported by those who are under no legal obligation so to do, or these names describing it unnecessary to consider other points raised. I am of opinion that the injunction herein issued should be maintained and perpetuated at the cost of defendants, and the intervention dismissed.

Judgment. Rendered Jan'y 2d, 1882.

Civil District Court, Div. "C."

MORGAN'S LOUISIANA AND TEXAS R. R. & S. S. Co.
vs.
BOARD OF HEALTH STATE OF LOUISIANA. } No. 7001.

For the reasons assigned in the written opinion of the court, this day delivered and filed, it is ordered, adjudged, and decreed that the injunction herein issued be maintained & perpetuated, at the cost of defendant, and that the intervention of the State of Louisiana be dismissed.

Judgment rendered 2d Jan'y, 1883. Judgment signed Jan'y 9th, 1883.

(Signed) F. A. MONROE, *Judge.*

168 *Motion for Suspensive Appeal. Extract from the Minutes of Div. "C." Filed January 9th*, 1883.

MORGAN'S LOUISIANA & TEXAS R. R. Co. *vs.* BOARD OF HEALTH.

JANUARY 9TH, 1883.

On motion of F. C. Zacharie, of counsel for defendants herein, and on showing that the judgment rendered herein on January 3d, 1883, and signed on January 9th, 1883, contains error to the great prejudice and damage of defendants, and on motion of J. C. Egan, att'y general on the part of the State of Louisiana, interventor herein; and on the same showing, it is ordered that a suspensive appeal from said judgment be allowed and granted unto said movers, without bond, to the supreme court of the State of Louisiana, on 3d Monday of January, 1883.

(Signed) J. C. EGAN,
Att'y General.

169 *Motion for Time.*

MORGAN'S LA. & TEXAS R. R. & S. S. Co.
vs.
BOARD OF HEALTH. } No. 8755.

JAN'Y 17, 1883.

On motion of F. C. Zacharie, of counsel for def'd't & appellant, and on showing by the annexed certificate of the clerk of the civil

district court for Orleans that the transcript herein is not completed, and cannot be completed by the return day, the third Monday in January, 1883, and that a delay of fifteen days from said return day is necessary, it is ordered that fifteen days time from said return day be allowed to def'd't & appellant to file said transcript.

Filed Jan'y 17th, 1883.

GEORGE W. DUPRE, *Clerk.*

Clerk's Certificate and Affidavit.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

170 MORGAN'S LA. & TEXAS R. R. & S. S. Co. *vs.* BOARD OF HEALTH. } No. 7001.

Certificate.

CLERK'S OFFICE, NEW ORLEANS, *Jan'y 17th*, 1883.

I hereby certify that the transcript of appeal in the above cause has not been completed for want of time, and that a delay of fifteen days is necessary to complete the same.

E. A. LUMINAIS,
D'y Cl'k Civil Dist. Court.

Affidavit.

E. A. Luminais, deputy clerk of the civil district court for the parish of Orleans, being duly sworn, says that the transcript of appeal in this case has not been completed for want of time, and that a delay of fifteen days is necessary to complete the same.

E. A. LUMINAIS.

Sworn to and subscribed before me, Jan'y 17th, 1883.

[SEAL.] JAS. D. RANKIN, *D'y Cl'k.*

Filed Jan'y 17th, 1883.

GEORGE W. DUPRE, *Clerk.*

171 *Order for Time. Extract from the Minutes.*

WEDNESDAY, *January 17th*, 1873.

The court was duly opened. Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, and Thomas C. Manning, associate justices.

MORGAN'S & LA. & TEXAS R. R. AND S. S. Co. *vs.* BOARD OF HEALTH. } No. 8755.

On motion of Frank C. Zacharie, Esqr., of counsel for the defendant and appellant, and considering the affidavit of the clerk of the

lower court, it is ordered by the court that fifteen days' time from the third Monday of January, 1883, be allowed to defendant and appellant in which to file the transcript in this cause.

Motion for Time.

MORGAN'S LA. AND TEXAS R. R. & S. S. Co. *vs.* BOARD OF HEALTH. } No. 8755.

172

FEBRUARY 1st, 1883.

On motion of F. C. Zacharie & E. D. White, of counsel for the defendant and appellant, and upon suggesting to the court that the transcript of appeal has not been completed for want of time, as appears from the certificate of the clerk of the lower court, and that a further delay of three days is required to enable the clerk to complete the same, it is ordered by the court that a further delay of three days be allowed appellant to file the transcript of appeal in this case in this court.

Filed Feb'y 1st, 1883.

GEORGE W. DUPRE, *Clerk.*

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

MORGAN'S LA. & TEXAS R. R. & S. S. Co. *vs.* BOARD OF HEALTH. } 7001.

CLERK'S OFFICE, NEW ORLEANS, *Feb'y 1st*, '84.

I hereby certify that the transcript of appeal in the above cause has not been completed for want of time and that an addi-
173 tional delay of three days is necessary to complete the same.

E. A. LUMINAIS,
D'y Cl'k Civil Dist. Court.

Affidavit.

E. A. Luminais, being duly sworn, says that the transcript of appeal in this case has not been completed for want of time, and that an additional delay of three days is necessary to complete the same.

E. A. LUMINAIS, *D'y Cl'k.*

Sworn to, and subscribed before me, Feb'y 1st, '83.

[SEAL.] JAS. D. RANKIN, *D'y Clerk.*

Motion and Order for Time—Extract from the Minutes.

THURSDAY, *February 1st*, 1883.

The court was duly opened. Present: Their Honors Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

Absent, on account of illness, Edward Bermudez, chief justice.

174 MORGAN'S LA. & TEXAS R. R. AND STEAMSHIP CO. *vs.* BOARD OF HEALTH. } No. 8755.

On motion of Frank C. Zacharie and Edward D. White, of counsel for defendant and appellant, and considering the affidavit of the clerk of the lower court on file.

It is ordered by the court that a further delay of three days be allowed appellant to file the transcript of appeal herein in this court.

175 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

MORGAN'S LOUISIANA AND TEXAS R. R. AND S. S. COMPANY, Appellee, *vs.* THE BOARD OF HEALTH OF THE STATE OF LOUISIANA, Appellants. } No. 7001. C. D. C., Div. "C."

F. C. Zacharie, E. D. White, Esqr., & J. C. Eagan, Esqr., att'ys for defendants & appellant.

Leovy and Kruttschnitt, att'ys for pl'ff's and appellee.

Transcript of Appeal Returnable to the Hon. the Supreme Court of the State of Louisiana on the 3rd Monday of January, 1883.

No. 8755.

Supreme court of Louisiana. Filed Feb'y 2nd, 1883.
GEORGE W. DUPRE.

176 *Continued Preference. Extract from the Minutes.*

TUESDAY, *March* 13, 1883.

The court was duly opened.

Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

MORGAN'S LOUISIANA AND RAILROAD & STEAMSHIP COMPANY *vs.* BOARD OF HEALTH. } No. 8755.

This case was ordered by the court to be continued, with preference.

Called and Continued—Extract from the Minutes.

TUESDAY, *April* 24, 1883

The court was duly opened.

177 Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP CO.
vs.
BOARD OF HEALTH. } No. 8755.

This case was called for trial, whereupon the court ordered the same to be continued and entered at the foot of the docket.

Continued Preference—Extract from the Minutes.

TUESDAY, *November 6th*, 1883.

The court was duly opened. Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

MORGAN'S LA. & TEXAS R. R. & STEAMSHIP CO.
vs.
BOARD OF HEALTH. } No. 8755.

178 This case was ordered by the court to be continued with preference.

Called and Appearance—Extract from the Minutes.

TUESDAY, *December* 18, 1883.

The court was duly opened. Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP CO.
vs.
BOARD OF HEALTH. } No. 8755.

This case was called for trial, and having heard argument from Henry J. Leovy, Esq'r, of counsel for plaintiff and appellee, the court ordered said case to be continued for further argument until Saturday, the 22d instant.

"Argued and continued."

Argued and submitted.

Extract from the Minutes.

SATURDAY, *December* 22*d*, 1883.

179 MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP CO.
vs.
BOARD OF HEALTH. } No. 8755.

This case was called for resumption of trial, and having heard argument from Henry J. Leovy, Esq'r, of counsel for plaintiff and appellee, and from Frank C. Zacharie, Esq'r., of counsel for the defendant, appellant herein.

The court took said case under advisement upon the briefs now on file for both parties.

Final Decree and Opinion—Extract from the Minutes.

MONDAY, *January* 21, 1884.

The court was duly opened pursuant to adjournment. Present: Their Honors Edward Bermudez, chief justice, and Eelix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP CO.
vs.
BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 8755.

180 On Appeal from the Civil District Court for the Parish of Orleans.

It is ordered, adjudged, and decreed that the judgment appealed from be annulled, avoided, and reversed; and it is now adjudged and decreed that the injunction herein granted be now dissolved, and that plaintiff's demand be rejected at its cost in both courts.

Judgment of the Supreme Court of Louisiana. Filed January 21st, 1884.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMPHIP CO.
vs.
BOARD OF HEALTH OF THE STATE OF LOUISIANA. } No. 8755.

Appeal from the Civil District Court for the Parish of Orleans.

Mr. Justice FENNER:

The act No. 69 of 1882 of the General Assembly of the State
181 of Louisiana provides that "The resident physician at the quarantine station on the Mississippi river shall require for every inspection and granting certificates the following fees and charges: For every ship thirty (30) dollars; for every bark twenty (20) dollars; for every brig ten (10) dollars; for every schooner seven dollars and fifty cents (7.50); for every steamboat (tow boats excepted) five (5) dollars; for every steamship thirty (30) dollars.

By virtue of other provisions of the quarantine laws of the State it is made the duty of the resident physician, or his assistant, to visit and inspect every vessel entering the port of New Orleans through the Mississippi river." If he finds the vessel free from disease, not in a foul condition, and not from an infected district, "he is required to furnish her with a certificate of health," and allow her to proceed to the city.

Vessels "in a foul condition," or having on board persons suffering or who have suffered during the voyage from "contagious, pestilential, or infectious diseases," he is required to detain for such
182 time, not less than ten days, as he may deem necessary, and "to employ such means of purification of the vessels as may

be directed by the Board of Health, and to require payment therefor from the vessel." Vessels out ten days from infected ports, presenting clean bills of health, not having, nor having had, sickness on board, and which are not in foul condition, shall be permitted to pass to the city after thorough fumigation by disinfecting agents.

Revised Statutes, §§ 3042-3-5.

The practice under these laws is to visit and inspect every vessel, and to require in every case, the fee prescribed therefor, and, in cases where, under the law, the service of disinfection by fumigation is rendered, to require therefor an additional fee of twenty or twenty-five dollars, as the estimated expense thereof.

Plaintiff is the owner of a number of vessels plying between the port of New Orleans and various other ports of this and other countries.

The object of the present suit is to perpetually enjoin the
183 collection of the fees & charges above mentioned, and to restrain the defendant from detaining the plaintiff's vessels because of this non-payment, on the ground that the laws authorizing the same are null and void, because they contravene.

1st. Article 1, sec. 8, par. 3, of the Constitution of the United States, which provides that "Congress shall have power * * * to regulate commerce with foreign nations, and among the several States and with the Indian tribes."

2d. Article 1, section 10, par. 3, which provides that "No State shall, without the consent of Congress, lay any duty upon tonnage."

We shall, at the onset, disembarass the case of several questions upon which we heard much learned argument, by laying down certain propositions, which we consider clearly settled by the Supreme Court of the United States, to whose opinion on such subjects we yield our firm adherence.

1st. The laws in controversy are in no sense "inspection laws," and can derive no support from that clause of the Constitu-
184 tion of the United States recognizing the right of the States to pass such laws, and to levy duties and imposts in execution thereof, "and imposts" intended by that provision referred exclusively to articles of merchandise and not to vessels.

Gibbons *vs.* Ogden, 9 Wheat, 1 203.
People *vs.* Compagnie 13 Reporter, 326.

2d. So far as the exclusive power of the Congress to "regulate commerce" is concerned, that power is not infringed by the laws under consideration, unless the fees and charges imposed thereby are in the nature of a "duty on tonnage," in which case they would doubtless violate both the general reservation to Congress of the exclusive power to regulate commerce, and also the special prohibition to the States to "lay any duty on tonnage." In other respects the right of a State to provide for the health of its people by establishing quarantine laws, and to subject vessels entering its ports to proper regulations as to inspection, detention, purification, &c.,

although necessarily affecting commerce, is nevertheless un-
185 disputed, subject possibly to the power of Congress to interfere and control it in its discretion.

Gibbon *vs.* Ogden. 9 Wheat., 203.
Passenger cases, 7 How., 414.
Peete *vs.* Morgan, 19 Wall., 581.

3d. If the fees and charges compounded of be of the nature of a "duty on tonnage," the fact that they are levied under quarantine laws would not save them from the prohibition of the Federal Constitution.

Such duties cannot be levied without the consent of Congress, and Congress has never consented, but, on the contrary, in its act of 1799, recognizing the existing quarantine laws of the States, it interposed the express proviso, "that nothing herein shall enable any State to collect a duty of tonnage or impost, without the consent of Congress of the United States thereto."

4th. If the fees and charges be in the nature of a "duty," the fact that it is laid on the whole ship and not at a rate of so much per ton, would not, of itself, exempt it from the federal prohibition.

186 Steamship Co. *vs.* Port-Wardens, 6 Wall., 31.
State Tonnage Tax cases, 12 Wall,, 218.

This elimination leaves open, on this branch of the case, the solitary question, whether the fees and charges here involved are "duties" in the sense of the Constitution.

It is the well established jurisprudence that there are many forced contributions which governments may exact from persons and property which are not considered as taxes, duties, or imposts, within the meaning or control of constitutional restrictions upon the power to levy the latter. Such are contributions provided for the construction of public works for the advantage of particular districts, like leveess, drainage, pavements, &c., levied on property with reference to the supposed benefits derived by the property from the works; contributions provided to defray the expenses of building bridges, erecting causeways, or removing obstructions in a water course, and like the light duty paid by all nations to the Danes, to be paid by such individuals only who enjoy the advantage, and fees or charges for services lawfully rendered, like wharfage, pilotage, & port-warden fees, to be paid by those who receive the services.

State *vs.* Nav. Co., 11 Mart. O. S., 324.
Crowley *vs.* Copley, 2 Ann., 329.
Lafayette *vs.* Orphan Asylum, 4 Ann., 1.
Wesley *vs.* Municipality, 9 Rob., 330.
187 Drainage Co. Case, 11 Ann., 370.
Levee Comm'rs *vs.* Lorio, 33 Ann., 276.
Matter of Mayor of N. Y., 11 Johns., 80.
Gibbons *vs.* Ogden, 9 Wheat., 235.
Pilotage Cases, 12 How., 312.
Port Warden Cases, 6 Wall., 31.

Cannon *vs.* N. Orleans, 20 Wall., 577.
Packet Co. *vs.* St. Louis, 100 U. S., 423.
City *vs.* Wilmot, 31 Ann., 65.
Elleman *vs.* R. R., 34 Ann., 703.

In the first of the cases above quoted Chief Justice Martin said that the words impost, tax, or duty, as used in constitutions or laws, "must be confined to the idea which they commonly and ordinarily present to the mind; exactions to fill the public coffers, for the payment of the debt and the promotion of the general welfare of the country," and not to contributions as the supposed equivalent of benefits conferred or services rendered, like those above indicated. It is apparent from the face of the laws here attacked that the fees and charges complained of are demanded as compensation for labors performed, expense incurred, and services rendered directly in connection with the vessels, the necessity for which arises solely from
the fact that such vessels, in the exercise of an undoubted
188 right, yet voluntarily and in pursuit of their own interests,
choose to seek the port of New Orleans, well knowing that they cannot enter said port without first being inspected and, if necessary, purified in conformity with laws to that extent unquestionably valid. Can it be said that the rendition of those services, by virtue of which alone the vessel is enabled, lawfully, to proceed to her destined port, is not a service to the vessel?

It is said that it cannot be considered as a service, because the vessel does not regard it as such, but rather as a burden, and because she does not voluntarily seek or avail herself of it. As to the first point, the question would seem to be, not whether the vessel regards it as a service, but whether it is a service, and whether she ought to regard it as such. It seems the plainest development of the primal duty "*sic utere tuo, ut altesum non loedere*," that a vessel should seek and desire the performance of services, the object of which is to prevent the chance of her spreading disease and pestilence amongst large populations. She is under the plain obligation, moral as well
as legal, to do everything to avoid such risk, and the service
189 which enables her to perform this obligation would seem to
be a service to her.

As to the second point, that the services are forced and not voluntary, the reliance placed upon the decisions of the Supreme Court of the U. S. in the wharfage and port-warden cases seems not well founded. In those cases there was no legal duty imposed on vessels to land at the wharves or to receive the services of the port-wardens. They had the perfect right to decline these benefits and services, and the court properly held that a State law exacting contributions for them, whether used or not, was unconstitutional; but had it been the legal duty of vessels to land at a particular place in the port of New Orleans, and had the city provided expensive wharves at such places, is it supposed that she would not have had the right to exact compensation for the use of the facilities thus afforded, although vessels landing at the port would have had no option as to accepting the use of them?

Finally, it is claimed that the services rendered under these quarantine regulations are for the benefit of the people of the city and State, and not for that of the vessel. No doubt that is true.
190 It is equally true that the object of the city in building wharves was to benefit its own people, trade, and commerce. We deem it unnecessary to consider more at length the objections which have been forcibly urged against the theory that the services in question are rendered to the vessel in such manner as to justify the exaction of compensation therefor. What we have said sufficiently expresses our views on the subject; and while the question is not free from difficulty, even to our own minds, we are confirmed in our course by the reflection that it leaves the avenue open for correction of any error which we may commit by appeal to the Supreme Court of the United States; whereas, if we should err in the opposite direction, the defendants would not be entitled to that remedy. The broad proposition of plaintiffs, that in the exercise of the right to establish quarantine systems the States are bound to bear all the expenses thereof, and cannot throw the burden, in any manner or to any extent, upon commerce, has certainly not yet received the endorsement of the Supreme Court of the United States.

In the Passenger case, Mr. Justice Wayne, summing up in
191 his separate opinion his view of what the entire court meant to decide, included, amongst other propositions, the following: "That the States may, in the exercise of their police power, pass quarantine and health laws, * * and may impose penalties for the violation of the same, * * and may, in the exercise of such police power, without any violation of the power in Congress to regulate commerce, exact from the owner or consignee of a quarantined vessel * * such fees as will pay to the State the cost of detention, and of the purification of the vessel, cargo, and apparel of the persons on board." Nothing in any of the several opinions rendered in this case clashes with this statement or indicates any dissent therefrom. Passenger Cases, 7 How., 414.

In the case of Peete *vs.* Morgan, strenuously relied on by plaintiff, the court, after recognizing the right of the States to pass quarantine laws, said: "It is evident that the power to established quarantine regulations cannot be executed without State possesses the means to raise a revenue for their enforcement; but it is equally evident that the means used for this purpose must be of such a character as the restrictions imposed by the Federal Constitution upon the taxing power of the States authorize." It cannot be doubted that the
192 court meant to sanction the right of a State, in its quarantine laws, to "raise a revenue for their enforcement" in some way connected with their execution. To suppose that "the means to raise a revenue" referred to, as implied in the power to established quarantine, meant only the ordinary powers of taxation of the State's own citizens and property, would be to accuse the court of uttering a mere inanity. We can conceive of no other means which could have been in view, except just such exactions of compensations for services as are provided in these laws of Louisiana. As far as appears from the statement and opinion in Peete *vs.* Morgan, the charge there in

question was a clear & simple duty on tonnage, levied by the State, without any reference to services rendered, and we think it has no application to the instant case, except in the clause above quoted.

We find nothing inconsistent with the foregoing views in the proviso inserted in the act of Congress of 1799. That was an act empowering & directing the officers of the General Government to conform to and assist in the execution of the quarantine laws of the States.

193 All or most of the seaboard States had such laws, the nature and mode of execution of which must have been known to Congress. Those laws contained provisions authorizing the exaction of fees and charges for inspection, disinfection, &c., entirely similar to those in the laws of Louisiana.

For instance, the law of South Carolina, passed as early as 1759, forbade vessels bound for Charleston from infected ports from passing Fort Johnson until visited, inspected, and certified by one of certain named physicians, and obliged the owner or master "to pay such physician a fee of seven pounds ten shillings current money; and, moreover, the expense of the boat and hands to carry down such physician to visit the said vessel, and to bring him up again to Charleston."

Nothing in the act of Congress reprobates such charges, and it must be supposed that the proviso, forbidding the levy of "any duty of tonnage," did not refer to charges for service of this character, but was intended to shut out any implication of a consent by Congress to the imposition of tonnage duties proper. There is nothing in the laws of this State, or in their execution, as disclosed by the evi-

194 dence, indicating the purpose of levying a forbidden tonnage duty under the guise of charges for service. The services are shown to be actually rendered, and the charges are not excessive to a degree sufficient to authorize judicial interference.

It is proved that the revenue derived therefrom is devoted exclusively to quarantine purposes; and in no year has it been sufficient to defray the quarantine expenses. The suggestion that the recognition of the right of the State to lay such charges leaves the power without limitation, and thus endangers commerce, is unfounded. The charges must be proportioned to the services, and, if excessive, may be subjected to judicial control; and moreover, Congress may at any time intervene and control the entire matter. We therefore hold that the plaintiff is not entitled to the relief asked.

As we maintain the validity of the act 69 of 1882, the constitutional objection to the act of 1870 (Rev. Stat., sec. 3042), on the ground of discrimination between the ports [of the] different States, does not arise, the law in that particular being repealed by the act of 1882. The claim that the act contravenes articles 48 or 30

195 of the constitution of the State is without foundation. The act is neither *local* nor *special*, but is of the most general character, intended for the benefit and protection of the entire people of the State. Neither does it *revive* or *amend* any prior law. It is an original and independent statute, repealing such portions of prior laws on the same subject-matter as are inconsistent with it.

It is therefore ordered, adjudged, & decreed that the judgment appealed from be annulled, avoided, & reversed; and it is now adjudged and decreed that the injunction herein granted be now dissolved, and that plaintiff's demand be rejected, at its cost, in both courts.

Rehearing refused.

196 Filed Jan'y 26th, 1844.

GEORGE W. DUPRE, *Clerk.*

Supreme Court of Louisiana.

MORGAN'S LA. & TEXAS R. R. & S. S. COMPANY
versus
THE BOARD OF HEALTH OF LOUISIANA. } No. 8755.

The State of Louisiana intervening.

LEOVY & KRUTTSCHNITT,
Attorneys for Plaintiffs.

Petition of Plaintiffs for Rehearing.

Morgan's La. & Texas Railroad and Steam Ship Company, plaintiffs herein, respectfully pray for a rehearing in this case, for the reasons contained in the statement of points and authorities hereto annexed, and made part of this application.

LEOVY & KRUTTSCHNITT,
Attorneys for Petitioners.

Points & Authorities.

It is with regret that plaintiffs feel constrained to apply for a rehearing; but this case is one of great importance to themselves and to the commercial interests of the city, and the court itself

197 has intimated a doubt as to the correctness of its decision.

The remedy suggested by an appeal to the Supreme Court of the United States presents many objections, which it is unnecessary to detail.

This case is practically a test one, between the Board of Health and the maritime interest of New Orleans, as is shown by the protest of ship owners and others annexed to the record.

First. The quarantine system is eminently one for the public welfare and for the creation of a revenue for that purpose. Works for the public welfare should not be charged to a particular class. Exactions for revenue are duties, not charges for services; that we are correct as to the facts is shown—

1st. By the first statute relating to quarantine, to which all others are amendments. The act (of 1855, p. 471) is entitled, "An act to establish quarantine for the protection of the State." The act of 1877, (p. 117), is "to reorganize and render more efficient the Board of Health of the State of Louisiana * * * * to provide for its expenses," etc. In the act the duties of the board are defined, and it

is required to attend to health matters in the city of New
198 Orleans and throughout the entire State. The officers who perform multifarious duties for the benefit of the entire State are exclusively paid by the fees collected at the quarantine station, excepting the sanitary inspectors for New Orleans. This the statutes show, and Dr. Jones, the president, in his testimony, corroborates this, (page 94, record,) when he says: "Not a dime, not a cent," is paid to the officers from any other source. Ship owners, therefore, pay for a board created for the benefit of the whole State. The record leaves no doubt on this point. The attorney general of Louisiana claims the right to intervene in the suit, on the ground that revenues are raised by the quarantine system, which otherwise would be a tax on the community. We insist that the State has no power to impose on commerce a tax to support a board created for the protection of the State, and especially a board whose main duties have no relation to quarantine. The distinction between a tax for revenue and one for local or special benefits is clearly stated in Chief Justice Martin's decision, referred to by the court (11 Martin's
199 O.S., 324,): "A duty is an exaction to fill the public coffers for the payment of debts or the promotion of the general welfare of the country." The tax imposed on vessels to support the Board of Health, created to perform duties all over the State, and to protect the State from epidemics, certainly falls within the above definition. It is difficult to conceive how a charge imposed on a vessel to raise a fund for the protection of the State can be compared to charges for drainage, bridges, etc., which are local in their nature, and benefit only those immediately concerned. As to what is a service for which a charge can be imposed, we can now only refer the court to the numerous cases in which the U. S. Supreme Court have distinguished between tonnage duties and exactions for special service, in which the Court has distinctly declared that the charge to be legal must not partake of the character of revenue; must be measured by the services, and must not be compulsory. It would seem to be impossible to bring within those decisions a charge of thirty dollars
200 per vessel for simply certifying that she is from a healthy port, without regard to the value of the service, (if there be service at all,) and for the purpose of providing a fund for the general welfare of the State.

Second. We contend that the opinion of Mr. Justice Wayne in the Passenger cases (7 How., 414) has no bearing on this case at all; because, first, the question before the court was the legality of a tax on passengers, and that of quarantine was not involved in the controversy; second, because it was the opinion of a single judge in a case where several separate opinions were rendered; third, that it expressly limited the right to charge "to such fees as will pay to the State the cost of detention and purification of the vessel, cargo, and apparel." The act of 1882 declared by this court to be constitutional exacts thirty dollars for every vessel coming from a healthy port, when nothing is done but to furnish a certificate, stating that fact.

Third. We contend that the proviso in the act of Congress of 1799,

that "nothing herein shall enable any State to collect a duty
201 of tonnage or impost, without the consent of the Congress of the United States," was intended to apply to then existing charges enacted by the several States. It was in consonance with the refusal of the convention in 1787 to make an exception in favor of a tax for harbors or light-houses. It was in keeping with their qualified consent to the State of Maryland, to impose a charge for a few months only, during an epidemic, to pay quarantine expenses.

The act itself was a long one, and shows, in all its provisions, that it was designed for a temporary emergency during the prevalence of a yellow fever epidemic. To provide for the future in such an act, while the constitutional provision sufficiency covers the ground, it seems to us would have been an act of supererogation, while to protest against a construction favoring existing charges was necessary. Such seems to have been the opinion of the United States Supreme Court, as expressed in the case of Peete *vs.* Morgan (19 Wall., 583.)

Fourth. We are at a loss to distinguish any difference be-
202 tween the case of Peete *vs.* Morgan (19 Wall., 583, and this case, except that in the one case the charge is measured by the ton, and in the other it is not; but the court decides, as the United States Supreme Court had done three times, that "this is a distinction without a difference."

In other words, that the mode of measuring the tax has nothing to do with its legality. In all other respects the cases are identical. The Texas act was to create a quarantine for the protection of the State. It provided means by a charge on vessels. (It did not, however, provide a charge for more than the quarantine expense, as the Louisiana statute does.) But, say the court, in Louisiana the vessel receives the benefit of an inspection, fitting the vessel for entry into port; but, can any quarantine be conceived of that does not do this? Will it be presumed, in violation of usage and practical sense, that in Texas, in spite of an elaborate quarantine system, vessels are permitted to pass quarantine stations without inspection? To find a difference between the Texas case and this now before this
203 court, it will be necessary to decide that, in Louisiana, vessels are inspected, and in Texas they are not.

But this honorable court says the U. S. Supreme Court approved a plan like that adopted in Louisiana, when it hinted there was a possible method of collecting from vessels revenue for quarantine purposes. What plan the court did refer to it is not necessary to discuss; what plan it said could not be adopted, is very clear; for it emphatically said, "but it is equally evident that the means used for this purpose must be of such a character as the restriction imposed by the Federal Constitution upon the taxing power of the State authorize;" "the tax in question is manifestly outside the jurisdiction of the State to impose, as it is a duty of tonnage within the meaning of the Constitution." While we think it unnecessary for this case to attempt to ascertain what plan the court referred to as feasible for obtaining means for quarantine purposes outside of the use of State funds, we think it is quite clear that the
204 court meant in the Peete cass what it distinctly said in the

Cannon case (20 Wall, 580), "if the just necessities of a local commerce require a tax which is otherwise forbidden, it is presumed that Congress would not withhold its assent if properly informed, and its consent requested." Indeed, if we are not mistaken, the Louisiana Board of Health has acted on this suggestion, and has petitioned Congress for that purpose.

Under an act of Congress, with such qualifications as would suggest themselves to that body, it is believed that commerce would be relieved from the great danger with which it is now imperilled. As was wisely said in the Cannon case, "this is a much wiser course, and Congress is a much safer depositary of the final exercise of this important power" than cities; and, it might have added, than States burdened, as some of them are, with heavy debts.

Fifth. There are two statutes upon which defendants depend, one authorizing a charge to pay actual costs of fumigation of vessels from infected ports, after proclamation by the governor, (act of 1876, p. 110, section 3043, R. S.), and the act of 1882, p. 89, providing
205 for inspection of vessels coming from healthy ports. In our first brief (p. 24) we said: "We do not question the value or the legality of mere quarantine laws; they are recognized in many cases, and, with the restrictions named in the Cattle cases, (R. R. Co. *vs.* Husen, 95 U. S. Supreme Court, p. 465), are constitutional. But we repeat that the cost cannot be imposed on commerce."

We now earnestly invite the attention of this honorable court to the serious question suggested by the exception which we made in laying down the general principle: Can a State impose a tax on the vessel itself, or a vehicle of conveyance of goods from one State to another, when no pretense of epidemics exists, on the ground of a police power for protection? We did not present any elaborate argument, directly, on this branch of the question, but we did insist that the tax imposed on vessels from New York at this season for inspection violated that clause of the U. S. Constitution which vested in Congress the exclusive power to regulate commerce. During the whole winter season, when there is not even a suggestion of more than ordinary sickness in New York, and hence no necessity
206 for inspection, the plaintiff's line of vessels, plying between New York and New Orleans, are heavily taxed, under the pretence of a necessity for protection, for health purposes. Cars come daily from New York, in less than sixty hours, with their passengers and freight. Numerous steamboats come daily down the Mississippi river from all the neighboring States—some from Alabama and Florida through the Rigolets; but this single point is selected for onerous charges. Can it be maintained that this is done to preserve the health of this State? or, is it not transparent that the motive is to "fill the coffers of the State?" The plaintiff's line of New York steamers never require fumigation; the enormous tax is for inspection of vessels from a healthy port. We contend that the case of the R. R. Co. *vs.* Husen is directly applicable and conclusive on this point. States may close their ports, or impose limited conditions of entry on vessels from infected ports—and this is usually done on a proclamation of the executive, that a necessity exists for

such measures—but, under the pretense of protection of health, can taxes be imposed on vessels, or goods, or passengers, passing
207 from one State to another, where no unusual sickness prevails? In the Husen case the Court said: "It seems hardly necessary to argue that, unless the statute can be justified, as a legitimate exercise of the police power of the State, it is a usurpation of the power vested exclusively in Congress."

Transportation is essential to commerce, or rather, it is commerce itself, and any obstacle to it or burden laid upon it by legislative authority is regulation. And the court goes on to say that while "for the purpose of self-protection, it may enact quarantine laws," "it may not interfere with transportation into or through the State beyond what is absolutely necessary for self-protection. It may not, under the cover of exerting its police power, substantially prohibit or burden either foreign or inter-state commerce." And the court added, "that in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." Can it be seriously contended by the State that inspection of vessels from New York at this season of the year, or at any time, without evidence of unusual sickness, is, in the words of the supreme
208 court, "absolutely necessary for its self-protection." Can it do this, in the face of the fact that passengers and freight, as we have said, are daily arriving from New York by cars? Is there greater necessity for protection against New York than against the ports on the Mississippi and the Ohio and other rivers?

If it be held that the charge objected to is constitutional, is there anything in the U. S. Constitution, or elsewhere, to prevent the Legislature from imposing taxes on all vessels and steamers coming from all ports to this city? Is there any valid reason why railroad trains should not be inspected before they enter the limits of the State? If inspection of a steamship with freight from the city of New York at this time be "absolutely necessary for the protection" of the State, why is inspection of cars from Mississippi, loaded with passengers, not necessary? Is it not obvious from these questions, not idly asked, that this subject of commerce cannot be tampered with without involving serious difficulties? We contend, then, that no State can, under pretense of protection to health, impose restrictions on vessels coming from other States, where there is no pretense of infection or necessity for preservation of health.

209 We think the act of 1882 clearly creates a discrimination. It imposes duties on steamers, or other vessels coming from States bordering on the Gulf and the Atlantic, that are not imposed on interior States. What we said in our brief on this subject, and the authorities cited, are directly in point.

We have thus hurriedly reviewed the points involved in this important case. A rehearing would enable us to discuss them more elaborately, and do greater justice to their importance.

Respectfully submitted,

LEOVY & KRUTTSCHNITT,
Atty's for Plaintiffs.

Additional Points. Filed Feb'y 2d, 1884.

This honorable court having extended the time for application and argument for rehearing, we desire to add further points to the hastily prepared brief filed within the six days required by the ruling of court.

This honorable court, in its decision, has restricted the numerous issues presented by the pleadings to a single point. We understand the court to concede all for which we contended, except as to a single point. It decides that the act of 1882, the latest statute, imposing a charge of thirty dollars on each vessel, and the statute in re-
210 lation to fumigation, are not in conflict with the provisions of the United States Constitution in relation to duties and commerce, upon the ground that the exactions are not in reality a duty, but a charge for actual services rendered.

The opinion of the court states that there are many charges imposed by State legislation which are neither taxes nor duties, "within the meaning or control of constitutional restrictions"; and, for illustration, it enumerates, first, "contributions provided for public works, for the advantage of particular districts, like sewers, drainage, levees," etc.; and, second, "fees or charges for services lawfully rendered, like pilotage and port-warden fees, to be paid by those who receive the service."

We respectfully contend that this reference is to two separate and distinct classes of charges; that the first class *is* a tax, duty, or impost "within the meaning and control of constitutional restrictions," *so far as provided by the Federal Constitution.* And we further contend that the second class of charges referred to by the court, that is, fees for services rendered, is wholly inapplicable to this case.

I.

We presume that it is unnecessary to insist that an exaction for local improvement or special service is taxation. Taxes are generally
211 *are* defined to be "burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes." (Cooley on Constitutional Limitations, sec. 479.) But a charge for local improvements benefitting in a special and peculiar manner some portion of the State is equally a tax, such as assessments for opening streets, draining swamps, etc. (Cooley on Taxation, p. 416.) Now, there is no doubt that this kind of taxation is not affected by many constitutional restrictions, such as State requirements of equality and uniformity, etc. Our position is that the principle laid down by this court is true only to a limited extent, and that, whether the charge be general or local, for public or special use, if it be a tax at all it is affected by the restrictions contained in the Federal Constitution in relation to tonnage duties and the regulation of commerce. The words are that no State shall lay "any duty of tonnage" for any purpose. It is clear, then, that the first class of cases referred to by the court do not cover the act of

1882. Whether the charge exacted be for public and general purposes (as is usually the case) or for local or quarantine purposes it does come within the constitutional restrictions, which make
212 no distinction as to the character or purpose of the exaction.

II.

The only point, then, for discussion is whether or not the charge here is for a service like that rendered by pilots, port warden, harbor master, owners of wharves, towboats, etc. In all this class of cases it must be borne in mind that the courts have decided that no charge could be made for the service to commerce generally, but in each case it must be rendered specially to the individual. It is essential also that the price be measured by the value of the service.

There are marked and very clear differences between taxes for the benefit of the public and charges for services. We have already given the definition of a tax. It is an imposition by or under the State for public or local benefit. A charge for services to the individual is based entirely on a supposed contract. The individual who builds a wharf (as, for example, is done on our gulf coast) announces the price for the use of his wharf. The owner of the vessel lands at the wharf with the price tacitly agreed on, and he pays accordingly the price stipulated for the use. The city builds a wharf in a like manner, and the municipal council generally
213 fixes the price according to the value of the service, and the use of it creates an obligation to pay the price assessed; but if the price be so large that a portion of the receipts go into the city treasury, becomes part of the revenue of the city, and is used to pay its officers, the charge then becomes a duty reprobated by law, and is null and void. In like manner, the pilot, the port warden, and the harbor master receive a price for services, which goes to them, and them only, and the State derives no part of it.

Between the parties it is distinctly understood that the compensation is a fair price for the service rendered. In all this class of cases the courts very properly say that there is no element of taxation, and the charge is recognized; but in not a single case, within our knowledge, has a charge been declared constitutional where the State or city participated in the profits, or when, directly or indirectly, the charge was imposed, in whole or part, for the public welfare.

Now, let us apply these well recognized principles to the present case. The plaintiffs' vessels come from a healthy port; there is no pretense of the prevalence of plague, epidemic, or even un-
214 usual contagious disease in the port whence she comes.

On her arrival in the Mississippi, notwithstanding the freedom granted by the ordinance of 1787, the treaty of 1803, the license granted her as a coasting vessel by the National Government, a certificate is given to the captain, enacted by a State law, and she is forced to pay for it thirty dollars, a sum fixed in an arbitrary manner, without the slightest reference to the supposed value of the service; and, if it be not paid, she is liable to seizure.

The first question is, what becomes of the sum thus collected? Much of it goes to pay the officers of the Board of Health—who are paid in no other way; they do not receive one dollar from any other source. So say the act of 1855, of 1877, and the president of the board himself. Now, what is this board? Is it not one created for the preservation of public health in the city and throughout the entire State? We annex a reference to the various statutes to show that the officers of this board are as much State officers, having various duties to perform in New Orleans and elsewhere throughout the State, as other State officers. There could be no more
215 flagrant violation of the constitutional prohibition to collect duties from vessels for revenue, if the money went to pay the salary of the Governor of the State or the employes of New Orleans. The collection of this fund for even quarantine purposes is prohibited by not only the United States Constitution, but expressly by the act of Congress of 1799.

In response to our objection that this charge of thirty dollars is assessed arbitrarily, and without the slightest regard to the value of any supposed service, this honorable court say that in no year has the amount thus received "been sufficient to defray the quarantine expenses;" but the test, when constitutionally considered, is not what relation the charge bears to quarantine expenses, but to the value of the services rendered to the vessel. As it is conceded that no charge can be imposed on commerce to defray quarantine expenses, the only question that can be considered is the value of the service to the party supposed to be benefitted.

The court say that since the vessel cannot come to the city without the certificate, the providing the certificate is a valuable ser-
216 vice, worth thirty dollars for every vessel. If revenue can thus be provided by the State by the erection of barriers to commerce, only to be removed only on payment of arbitrary exactions, then the constitutional provisions become a dead letter. The answer to this position is elaborately and fully provided by the decision in 92 U. S. S. C., p. 259.

In that case, for a purpose within the police powers of the State, an act was passed by the State of New York to protect the State from foreign pauperism, requiring, in substance, the master of vessels from foreign ports to report to the mayor of the city of New York a description of passengers, and the captain was required to give bond, conditioned to indemnify the State, etc., against expense incurred for the support by the State, etc., of the passengers thus brought, but giving to the captain the option of paying one dollar and fifty cents for each passenger.

Two other cases (reported in 92 U. S. S. C.), presenting the same points, were decided at the same time—one was from Louisiana and one from California. The court decided the statutes to be unconstitutional, and, referring to the Passenger cases (7 Howard, p.
217 414), said that decision (relied on by this court) was not entitled to much weight, as "each member of the court delivered a separate opinion, none of them professing to be the authoritative opinion of the court."

The court say (p. 269) that the "requirement of a catalogue of passengers (as decided in case of New York *vs.* Milne and the Passenger cases), with statement of their last residence, and other matters of that character, is a proper exercise of State authority, and that the requirement of the bond, or the alternative payment of money for each passenger, is void, because forbidden by the Constitution and laws of the United States."

The court adds, "nothing is gained in the argument by calling it the police power." * * * "It is clear that, from the nature of our complex form of government, that whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of power it may fall, or how closely allied to powers conceded to belong to the States."

"Whatever subjects of this power (commerce) are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclu-
218 sive legislation by Congress." (See also the case on page 275 of the same volume.)

III.

This honorable court says that "It is proved that the revenue derived by the act is devoted exclusively to quarantine purposes." The provisions of the acts of 1855 and of 1877, and the record, (p. 94,) shows that this is an error. The salaries of the president, secretary, treasurer, and attorney of the board are paid exclusively from the money collected at the quarantine station. We have seen that these officers are State officers, and that many of their duties have no relation whatever to quarantine service. They are a city Board of Health as well as a State board. (Art. 1877, p. 117.) But even if the money thus collected were devoted exclusively to quarantine purposes, it would not the less be a violation of constitutional prohibitions. In the case of Peete *vs.* Morgan, the act expressly declares that "the aforesaid fees, collected as aforesaid, shall be reported to the authorities of the town or city at which said quarantine is established, and all fees and fines, as hereinbefore provided for, shall be used to defray the expenses of keeping said quaran-
219 tine;" act approved August 13, 1870, p. 75, and yet in the face of the fact that, unlike the Louisiana act, all the money was used for quarantine purposes, the U. S. Supreme Court declared the act to be unconstitutional.

IV.

As confirmatory of the opinion relied upon by us that Congress intended by the proviso to the act of 1799 to guard against being understood to sanction the charges then imposed by the States, we ask special attention to the action of both Congress and the State of Maryland in the same year in a quarantine matter. The act of Congress was passed in February, 1799. At that time there existed a statute in Maryland which had been enacted in 1793, entitled "An

act to appoint a health officer for the port of Baltimore, in Baltimore county," for the payment of whom a tax had been imposed on all vessels coming from a foreign voyage. Both the State of Maryland and Congress evidently supposed that this act came within the prohibition of the congressional proviso, for the State applied to Congress for its approval, and Congress, by act of June 9th, 1799,
220 four months after the passage of the prohibitory act, granted its consent, but limited the duration of the act "to the end of the next session of Congress, and no longer." Here was a limited charge for the payment of a single officer, whose duties were restricted to quarantine work, and the charge was on vessels only from foreign ports, yet the consent of Congress was deemed essential by both the State and Congress, and was granted only conditionally. Clearly according to this construction of the State and of Congress, then composed of many of the men who framed the Constitution, Maryland was unable, after the end of the term of 1799, to impose a charge on vessels from foreign ports, to pay even for one officer, deemed essential for the quarantine purposes. And this limitation as to time and extent of the privilege was imposed by Congress during a panic caused by the prevalence of an epidemic. And the tax was for the health officer rendering, presumably, the same "service" as those extended in the present case, and the use of the amount collected was limited to the payment of this officer, for the act reads
221 that the charge is imposed "for the purpose of the said act." If there be anything in the argument of construction derived from contemporaneous acts, this fact is certainly entitled to great weight, if it be not conclusive.

V.

The act of 1882 is not, in reality, a "quarantine" regulation at all. It is directed against healthy cities, and is not designed, in the usual sense, to prevent the introduction of contagious diseases. Quarantine, as generally understood at the time of the adoption of the Constitution, was a system to detain vessels at certain stations arriving from ports where epidemics or plagues prevailed. See "Quarantine," in American Encyclopedia.

The detention of vessels from healthy ports in the United States, or imposition of charges on vehicles of transportion from neighboring States, where epidemics do not prevail, would seriously interfere with, if not destroy, inter-state commerce. On this point we rely confidently on Rail Road *vs.* Husen, (93 U. S. S. C., p. 465.)

222 VI.

It has been observed that the quarantine statutes are necessary to preserve public health. It may be conceded that quarantine is necessary, but it by no means follows that the specific plan adopted by the Louisiana statutes for raising revenue is at all necessary. The Texas device for collecting the expenses from commerce was annulled by the decision in the case of Peete *vs.* Morgan, and in the

revised statutes of Texas it will be seen that the obnoxious section has been omitted; yet no ports are more strictly quarantined than those of Texas.

When the passenger act in New York was declared illegal, it was supposed great inconvenience would result for want of funds to support the immigration bureau; but when the Legislature met an annual appropriation was made, and the system lives in more than wonted vigor. The same may be said of all those officers in
223 favor of whom unconstitutional statutes were enacted. Port wardens, harbor masters, and wharf owners still continue to exist. If the object to be obtained be nothing less than public health, it is presumed that means can be legally obtained to provide for it, as means are obtained for much less important objects; and if the State be unable to supply these means, then Congress may be appealed to for the requisite consent. If it be withheld, it will doubtless be for the reason that Congress thinks the power in the State to regulate commerce, in any manner, dangerous to that uniformity deemed essential for the welfare of the whole nation.

It will be remembered by this honorable court that in the Port Warden case it was of a tax of only five dollars per vessel that Chief Justice Chase said: "It becomes a serious burden, and works the very mischief against which the Constitution intended to protect commerce among the States." We think the earnest language of
224 the whole shipping interest in New Orleans, addressed to the Legislature, in opposition to the act of 1882, is entitled to great weight. They say: "We willingly pay large taxes on property legally imposed, but we cannot acquiesce in a policy which imposes exclusively on shipping the entire expense of a system by which the whole community is benefitted." "We do emphatically deny that the State has power to make the owners of vessels who are not specially benefitted defray all the expenses of a system devised for the good of the whole community." It may be added that the plaintiffs, in addition to the taxes paid on their railroad property, pay heavy taxes on their vessels as property. If we have appeared so zealous in our argument for a new hearing, we trust an excuse will be found in our conviction that the case now before the court is one of grave importance to the whole community. The tendency to dangerous encroachment is found in the fact that, in 1822, the Board of Health applied for permission to tax
225 every steamship (though perhaps arriving from neighboring States) the enormous sum of sixty dollars per vessel, besides exactions for fumigation. If the right to tax commerce at all be recognized, it will be practically impossible to fix a limit that will not be detrimental or destructive to the commerce of the State. As a mere matter of policy it would seem to be better that the sum for quarantine service to the whole population of the State be paid from its revenues than that its growing commerce should be seriously crippled, and wise provisions of the fundamental law of the land be disregarded and ignored.

Respectfully submitted.

LEOVY & KRUTTSCHNITT,
Of Counsel for Pl'ffs.

Statutes of La. relating to quarantine: (Acts of 1855, p. 471; 1858, p. 187; 1870, extra session, p. 54; 1876, p. 110; 1877, extra session, p. 117; 1882, p. 89.)

1. The act of 1855 (p. 471) is entitled "An act to establish a quarantine for the protection of the State," and creates a board of
226 health. Section 4 provides that the president of the board "shall receive a salary of $2,000 a year." Section 6 fixes salary of secretary. Section 8 provides for fees from vessels. Section 11 fixes salary of the treasurer. Dr. Jones says in his testimony (Record, p. —) that the salaries are paid from fees collected at quarantine station.

2. The act of 1858 (p. 187) amends the act of 1855. It provides for making the Board of Health not only a board for the State generally, but a board also for New Orleans. Section 12 provides that the Board of Health shall have control of matters relating to the health of the city. Section 2 fixes the fees to be collected from vessels, and declares that the money thus collected shall be sent to the secretary, and this money, "as well as all fees collected by him, shall form a fund for the support of quarantine," including, of course, payment of salaries of the Board of Health, now become practically a city board as well as a city board.

3. Act of 1870 (extra session, p. 54), sec. 6, provides all the
227 details of the board as a Board of Health for the city of New Orleans.

4. Act of 1876, p. 110, relates to fumigation and charges therefor.

5. Act of 1877, extra session, p. 117, is to reorganize and render more efficient the Board of Health of the State of Louisiana; to define its powers and prescribe its duties and those of quarantine and other officers under its control. Section 3 fixes the salary of the president of the board at not exceeding $2,400, and the secretary and treasurer at not exceeding $2,000 per annum, to be paid from the quarantine funds. Section 4 makes the State Board of Health in every sense a city board; the salaries of four sanitary inspectors, appointed by the board, are paid from city fees.

The board is "to provide for, protect and preserve, by adequate means, the health and salubrity of the city of New Orleans," and the officers of the board, who perform this valuable service, are paid by fees collected from shipping at the quarantine station on the Mississippi; and then comes provisions which, with section 7,
228 make a mass of the money collected from forfeitures at the quarantine station, and fees collected in New Orleans for recording births, deaths, and marriages, for the purpose of paying certain local expenses of the board, and if the money thus collected exceed the expenses, then "the said excess shall be paid to the administrator of finance of the city of New Orleans," of course, to be used to maintain the city government; and yet it is contended that all this confused mass of legislation, exacting, from commerce, revenue for State and city purposes, is simply a quarantine system, and the money collected is exclusively a service rendered directly to the owners of vessels.

6. The statute of 1882 (p. 89) is the last of the series of acts. It differs very little in the mode of assessing charges for certificates of health from the earlier acts. By the second section of the act of 1858 the Board of Health furnished certificates in the same manner as required by the act of 1882, and for the certificate the fee was demanded. It was against this act, in the case of Morgan *vs.* The Board of Health, and in several other cases, that Mr. Justice
229 Bradley granted the injunction, on the ground of its violation of the constitutional provisions which we have invoked, and in those decisions the board, under the advice of its counsel, have heretofore always acquiesced.

Rehearing Refused. Extract from the Minutes.

MONDAY, *March 24th*, 1884.

The court was duly opened, pursuant to adjournment. Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, and Thomas C. Manning, associate justices.

MORGAN LA. & TEXAS R. R. AND STEAMSHIP CO.
vs.
BOARD OF HEALTH. } No. 8755.

It is ordered that the rehearing applied for in this case be refused.

Writ of Error.

Supreme Court of Louisiana.

MORGAN'S LA. & TEXAS R. R. & S. S. CO.
vs.
230 BOARD OF HEALTH OF LOUISIANA, STATE INTERVENING. } No. 8755.

Copy of a writ of error lodged in the clerk's office of the Supreme Court of Louisiana. Copy in pursuance of the [—] in such cases made and provided this thirty-first day of March, one thousand eight hundred and eighty-four.

LEOVY & KRUTTSCHNITT,
Attorneys of Pl'ff in Error.

Filed 31 March, 1884.

T. M. C. HYMAN, *D'y Clerk.*

Copy of Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the

State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Morgan's Louisiana and Texas Railroad & Steamship Company, plaintiff, *vs.* the Board of Health and
231 the State of Louisiana, intervenor, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Morgan's Louisiana and Texas Railroad and Steamship Company, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 31st day of March, in the year of our Lord one thousand eight hundred and eighty-four.

E. R. HUNT,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by—
E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

233 *Bond for Writ of Error.*

Filed 31 March, 1884. T. M. C. HYMAN, *D'y Clerk.*

Supreme Court of Louisiana.

MORGAN'S LA. & TEXAS R. R. AND S. S. Co.
vs.
BOARD OF HEALTH OF LA., STATE OF LA. Intervenor. } No. 8755.

Know all men by these presents, That we, Morgan's Louisiana and Texas Railroad and Steamship Company, (A. C. Hutchinson, as

principal, and A. C. Hutchinson and Albert Baldwin *in solido*, as sureties, are held and firmly bound unto The Board of Health of Louisiana and the State of Louisiana, and to each of said parties, in the full and just sum of ten thousand dollars, to be paid to the said parties, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirty-first day of March, in the year of our Lord one thousand eight hundred and eighty-four.

234 Whereas, lately at a session of the supreme court of Louisiana, held in New Orleans, in a suit depending in said supreme court, wherein Morgan's La. & Texas Railroad and Steamship were plaintiffs, and the Board of Health of La. were defendants, and State of Louisiana intervenor, judgment was rendered against said Morgan's La. & Texas Railroad & Steamship Company, plaintiffs, and the said Morgan- La. & Texas Railroad & Steamship Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of Health of Louisiana & the State of Louisiana, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such that if the said Morgan's Louisiana and Texas Railroad & Steamship Company shall prosecute their writ to effect, and answer all damages and cost, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed & delivered in the presence of—

235 MORGAN'S LA. & TEXAS R. R. & S. S. CO. [L. S.]
By A. C. HUTCHINSON, *Pres't.*
A. C. HUTCHINSON, [L. S.]
A. BALDWIN, [L. S.]

Approved—
E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

Affidavit.

U. S. OF AMERICA, *District of Louisiana.*

Personally appeared A. C. Hutchinson, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, La., and is worth the full sum of ten thousand dollars, over and above all his debts and liabilities and property exempt from execution, and within the State of Louisiana.

A. C. HUTCHINSON.

Subscribed & sworn before me this 31 day of March, 1884.
ANDREW HERO, *Not. Pub.*

Agreement. Filed in Supreme Court, La., June 30th, 1884.

Supreme Court.

MORGAN'S LA. & TEXAS R. R. & S. S. COMPANY
vs.
BOARD OF HEALTH OF LA. } No. 8755.

In this case it is agreed that the books marked "A," "B,"
235½ and "C," and the plan marked "Doc. E," and the paper marked "Doc. D," be sent in the original with the record to the U. S. Supreme Court, in this case, and the clerk is dispensed from copying the same.

New Orleans, June 24th, 1884.

(Signed) LEOVY & KRUTTSCHNITT,
Att'ys for Morgan Co., Pl'ff in Writ of Error.

(Signed) F. C. ZACHARIE,
Att'y for Def'd'ts.

236 *Certificate of the Clerk of the Supreme Court.*

Supreme Court of the State of Louisiana.

UNITED STATES OF AMERICA, *State of Louisiana:*

I, George W. Dupré, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing two hundred and thirty-five (235) pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of ——, in a certain suit wherein Morgan's Louisiana and Texas Railroad and Steamship Company was appellee, and the Board of Health of the State of La. was appellant, and also of all the proceedings had in this supreme court on the appeal taken by said Morgan's La. & Tex. R. R. & S. S. Company, which appeal is now on the files thereof under No. 8755.

237 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this sixteenth day of June, in the year of our Lord one thousand eight hundred and eighty-four, and in the one hundred and eighth year of the Independence of the United States of America.

[SEAL.] GEORGE W. DUPRÉ, *Clerk.*

238 *Certificate of the Chief Justice.*

Supreme Court of the State of Louisiana.

UNITED STATES OF AMERICA, *State of Louisiana:*

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupré is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, that the signature of George W. Dupré to the within certificate is in the proper handwriting of him, the said

clerk, that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this seventeenth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. BERMUDEZ, *Chief Justice.*

239 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Morgan's Louisiana and Texas Railroad and Steamship Company, plaintiff, and the Board of Health of the State of Louisiana, defendants, and in which the State of Louisiana is intervenor, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the
240 construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Morgan's Louisiana and Texas Railroad and Steamship Company, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 31st day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

Endorsed: No. 8755. Supreme court of Louisiana. Morgan's La. and Texas Railroad & Steamship Co. *versus* Board of Health of Louisiana, State of Louisiana intervenor. Filed 31 March, 1884. T. McC. Hyman, d'y clerk.

241 THE UNITED STATES OF AMERICA:

Supreme Court of Louisiana, District of Louisiana.

The President of the United States to the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Morgan's Louisiana and Texas Rail Road and Steam Ship Company are plaintiffs, and the Board of Health of Louisiana defendants, and the State of Louisiana is intervenor, and you are to show cause, if any there be, why the judgment rendered against the said Morgan's La. & Texas Railroad & Steam Ship Company, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirty-first day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

242 Endorsed: Supreme court of Louisiana. No. 8755. Morgan's Louisiana & Texas Rail Road and Steam Ship Company *vs.* Board of Health of Louisiana, State of Louisiana intervenor. Citation. Filed 9 April, 1884. T. McC. Hyman, d'y clerk. [25-cent Louisiana law stamp.]

Sheriff's Return.

Rec'd April 2nd, 1884, and on the 3rd day of April, 1884, I served a copy of the within citation on the State of Louisiana intervenors herein, through J. C. Egan, its attorney general, by leaving the same at his office, No. 19 Commercial alley, in the hands of W. B. Sommerville, his chief clerk, said J. C. Egan, attorney general, being absent from his office at time of said service.

JNO. E. SIEKFORT,
D'y Sheriff, Parish of Orleans, State of Louisiana.

Sworn to and subscribed before me, at the city of New Orleans, State of Louisiana, on this 5th day of April, A. D. 1884.

[SEAL.] JAS. T. CLARK,
Clerk of the Civil District Court for the Parish of Orleans.

243 THE UNITED STATES OF AMERICA:

Supreme Court of Louisiana.

The President of the United States to the Board of Health of the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Morgan's Louisiana and Texas Rail Road and Steam Ship Company are plaintiffs, and the Board of Health of Louisiana are defendants, and the State of Louisiana is intervenor, and you are to show cause, if any there be, why the judgment rendered against the said Morgan's La. & Texas Rail Road & Steam Ship Company, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirty-first day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

244 Endorsed: Supreme Court of Louisiana. No. 8755. Morgan's Louisiana & Texas Rail Road and Steam Ship Company *vs.* Board of Health of Louisiana, State of Louisiana intervenor. Citation. Filed 9 April, 1884. T. McC. Hyman, d'y clerk. [25-cent Louisiana law stamp.]

Sheriff's Return.

Rec'd April 2nd, 1884, and on April 2nd, 1884, I served a copy of the within citation on the Board of Health of the State of Louisiana, defendant herein, thro--- Dr. Joseph Jones, its president, in person. Ret. same day.

P. A. McINTYRE, *D'p'y Sh'riff.*

Sheriff's fees, 50.

Sworn to & subscribed before me, at New Orleans, State of Louisiana, on this 4th of April, A. D. 1884.

[SEAL.] JAS. T. CLARK,
Clerk Civil District Court for the Parish of Orleans.

Endorsed on cover: Louisiana supreme court. No. 898. Morgan's Louisiana and Texas Railroad and Steamship Company, plaintiff in error, *vs.* The Board of Health of the State of Louisiana and the State of Louisiana. Filed August 8th, 1884.

Office Supreme Court U. S.
FILED.
APR 5 1886
JAMES H. McKENNEY,
CLERK.

118-455

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

No. 552.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, PLAINTIFF IN ERROR.

versus

THE BOARD OF HEALTH OF THE STATE OF LOUISIANA, AND THE STATE OF LOUISIANA.

BRIEF FOR MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, PLAINTIFF IN ERROR.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

No. 552.

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FACTS.

Plaintiff is the owner of two lines of Steamships, one plying between the ports of New Orleans and New York, and the other between Morgan City, La., and ports of Texas, etc. In 1882, the Legislature of Louisiana enacted a Statute, amending other Statutes relating to quarantine, entitled "an Act to fix and regulate charges at the Mississippi River Station, to establish a lien and privilege on vessels inspected, in favor of the Board of Health for the same, and to provide for their enforcement and collection by provisional seizure."

Plaintiff, to prevent the enforcement against it of this and other provisions of the several quarantine statutes, and the seizure of its vessels, applied to a State District Court for a writ of

injunction, alleging that all the Statutes under which the collection and seizure were sought to be made were in violation of certain provisions of the United States Constitution, and, therefore, null and void. The District Court, after trial of the cause, decided that the Statutes were null and void, for the reasons assigned by plaintiff, and perpetuated the injunction. On appeal, the Supreme Court of Louisiana reversed the judgment of the lower court, maintained the constitutionality of the Statutes and dissolved the injunction.

The State intervened and asked for judgment in favor of the State.

The Board of Health claims the right to collect the charges or fees for alleged quarantine purposes, by virtue of several Statutes, of which the following is a list:

1. Act of 1855 (p. 471), to establish quarantine for the protection of the State and to create a Board of Health.

2. Act of 1858 (p. 187), amending above Act of 1855, (which provides among other things, that the Board of Health shall perform certain duties pertaining to health in the City of New Orleans).

3. Act of 1870 (Extra Session, p. 84), Section 6, (which defines duty of the Board as a City Board of Health as well as State).

4. Act of 1876 (p. 110), relates to the fumigation of vessels, and imposes certain charges for fumigation, and to defray expenses of detention.

5. Act of 1877 (Extra Session, p. 117), reorganizes the Board of Health.

6. Act of 1882 (p. 89), "to fix and regulate charges at the Mississippi River Station, to establish a lien and privilege on vessels inspected, in favor of the Board of Health for the same, and to provide for their enforcement and collection by provisional seizure."

This last Act and Sections of other Acts, bearing on the con-

troverted points in this case, relating to quarantine charges, are annexed to this brief.

LAW POINTS.

We contend that all the provisions of the Act of 1882 (p. 89); of 1870 (Extra Session, p. 84), and of the other Acts, to which reference has been made, that impose charges on vessels to defray the expenses of a quarantine system, and to support a Board of Health, are null and void, for the following reasons:

First. Because they impose tonnage dues and conflict with the third paragraph, tenth section, of the first Article of the United States Constitution, which declares that "no State shall, without the consent of Congress, lay any duty of tonnage."

Second. Because, so far as they impose charges or duties on vessels engaged in the coast trade, or plying between ports of Louisiana and other States or countries, they are regulations of commerce and violate the third paragraph of the eighth section, first Article of the United States Constitution, which vests in Congress the exclusive power to regulate commerce.

Third. Because, by imposing charges exclusively on vessels passing the Mississippi River Quarantine Station, preference is given to vessels from the ports of one State over those of another, and duties are imposed on vessels bound from one State to another, in contravention of paragraph six, section nine of the first Article of the United States Constitution.

Fourth. And we allege that said Statutes are null and void, because they conflict with the provisions of the Act of Congress of 1799 (1st Statutes at Large, p. 16), *relating to quarantine*, which provides "that nothing herein shall enable any State to collect a duty of tonnage or impost without the consent of the Congress of the United States."

I.

We contend that the Acts referred to, and principally those of

1882 (p. 89), and 1870 (Extra Session, p. 84), are null and void, because they impose tonnage duties.

Before, however, discussing the constitutional features of this case, we desire to invite the attention of the Court to the fact that the Statutes in question impose the onerous charges complained of, which we allege far exceed the sum necessary for quarantine purposes, not only to pay the expenses of quarantine and cost of erection and repairs of buildings and maintenance of grounds, etc., but also to pay the salaries of the officers of the Board of Health and other expenses. The Board of Health, as we shall show, has various duties to perform for the benefit of the whole State, and it is also made, for many purposes, a local Board for the special purpose of protecting the health of the City of New Orleans. The salaries of the members of the Board are paid *exclusively* from duties collected on vessels at the quarantine station. While the actual expense of the quarantine system proper is comparatively small—in the ten years prior to 1883 not exceeding annually $22,000 (Record, p. 52)—the amount claimed from the Morgan Company (plaintiff in error) alone, for the year 1884, from one quarantine station, for only their New York line of five steamers, is $6,660, as shown by the sworn statement of the President of the Board of Health, filed in this Court on application for advancement of this cause.

In view of the enormity of such exactions, imposed exclusively on a small class of merchants for the benefit of the people of a whole State, the owners of vessels have cause to apprehend the destruction of their business. For this reason the whole shipping interest in New Orleans formally protested against the passage of the Act of 1882. (Record, p. 35, and original petition annexed to the record). At several quarantine ports the tax is, in other States, small, and, because of its insignificance, has been submitted to, in spite of its illegality.

The Statutes requiring payment of the salaries, etc., of the Board of Health, from quarantine receipts are:

1. The Act of 1855 (p. 471) is entitled "An Act to establish quarantine *for the protection of the State*," creates a Board of Health. Section 4 provides that the President of the Board "*shall receive a salary of $2,000 a year.*" Section 6, fixes salary of Secretary. Section 8 provides for fees from vessels. Section 11 fixes salary of the Treasurer.

2. The Act of 1858 (p. 187) amends the Act of 1855; it provides for making the Board of Health, not only a Board for the State generally, *but a Board also for New Orleans.* Section 12 provides that the Board of Health shall have control of matters relating to the health of the city. Section 2 fixes the fees to be collected from vessels, and declares that the money thus collected shall be sent to the Secretary, and this money, "as well as all fees collected by him, shall form a fund *for the support of quarantine*," including payment of salaries of the Board of Health.

3. Act of 1870 (Extra Session, p. 54), Section 6, provides all the details of the Board, as a Board of Health *for the City of New Orleans.*

4. Act of 1877, Extra Session, p. 117, is to reorganize and render more efficient the Board of Health of the State of Louisiana; to define its powers aad prescribe its duties, and those of quarantine and other officers under its control.

Section 3 fixes the salary of the President of the Board at not exceeding $2,400, and the Secretary and Treasurer at not exceeding $2,000 per annum, to be paid from the quarantine funds.

Section 4 makes the State Board of Health in *every sense a city board;* the salaries of four sanitary inspectors, appointed by the Board, are paid from city fees. The Board is "to provide for, protect and preserve, by adequate means, the health and salubrity of the City of New Orleans."

And then come provisions which, with Section 7, make a

mass of the money collected from forfeitures at the quarantine station, and fees collected in New Orleans for recording births, deaths and marriages, for the purpose of paying certain local expenses of the Board, and if the money thus collected exceed the expenses, then "the said excess shall be paid to the Administrator of Finance of the City of New Orleans;" of course, to be used to maintain the city government.

5. The Statute of 1882 (p. 89) is the last of the series of Acts. It differs very little in the mode of assessing charges from the earlier Acts. By the second Section of the Act of 1858, the Board of Health furnished certificates in the same manner as required by the Act of 1882.

The fact that the Board is supported exclusively by quarantine fees is admitted by the President of the Board of Health in his testimony (Record, p. 94).

With as much propriety, could the salary of the Governor of the State be paid by imposition of duties on vessels as those of the members of the Board of Health. Such, indeed, was the language of Mr. Chief Justice Chase, as applied to duties for the payment of port wardens (6 Wall. 31).

Our position is, that the charge imposed by these Statutes constitutes a tonnage duty, but we do not contend that the States have no power to establish quarantine regulations; we say that the States are powerless to impose on vessels the cost of a system created for the benefit of a whole community. In the language of Mr. Justice Bradley (as reported by the Galveston papers in the case of Peete vs. Morgan, in the Circuit Court in Texas): "The States have a right to establish quarantine regulations; but they have no right to place toll gatherers at the gateways of commerce, and lay indiscriminate exactions upon all vessels that enter thereby." The decision in that case (almost identical with this, as will be shown hearafter) was affirmed by this Honorable Court. (19 Wallace, 583).

The Act of 1858 (p. 157) had regulated some of the quarantine charges according to the tonnage of the vessel. In several cases in the State Court, and in one in the United States Circuit Court in Louisiana, this Act had been declared to be unconditional. The Legislature evidently supposed that it could remove constitutional objections by omitting reference to tonnage measurement, and enacted this Statute of 1882. It would certainly seem idle, at this day, to cite authorities to show that a tax imposed on the vessel itself is as much a duty of tonnage reprobated by the United States Constitution as a charge measured by the tonnage of the vessel. This was so decided in the Port Warden case (6 Wallace, 31) where the tax was five dollars on *every vessel.* The Court there said: "It was not only a *pro rata* tax which was prohibited, but every duty on the ship, whether a fixed sum upon the whole tonnage, or a sum to be ascertained by comparing the amount of tonnage with the rate of duty. In this view of the case the levy of the tax in question is expressly prohibited." And, again, this Court so decided in the "State tax tonnage cases" (12 Wallace, 218), and in the "Cannon" case (20 Wallace, 580).

The Act of 1882 requires that every steamship passing the Mississippi River Quarantine Station shall pay thirty dollars. It makes no difference whether the vessel comes from a distant infected port or a neighboring healthy port. For steamers coming from Galveston and making frequent trips, where no inspection is at all necessary, the same invariable rule would be applied. In the Port Warden case, where the tax imposed was only *five* dollars on every steamer, Mr. Chief Justice Chase said, that the tax on vessels from neighboring States "becomes a serious burden, and works the very mischief, against which the Constitution intended to protect commerce among the States."

It is difficult to understand upon what ground these Statutes can be defended. They impose an enormous charge on com-

merce for the benefit of the people of the State, and not for services rendered the owners of vessels. The first Statute on the subject (1855, p. 471) is called an Act for the protection *of the State.*

In charges imposed on vessels for wharfage, the vessel itself receives a direct benefit equivalent to the amount paid. If the charge is clearly beyond the value of the service rendered, or is a wharfage charge where the vessel does not use the wharf, this Court has frequently decided the charge to be a tax in violation of the Constitutional prohibition.

So, in the case of the Port Wardens, where the charge was five dollars and no service was rendered *to the vessel*, it was declared both a tonnage duty *and* a regulation of commerce (6 Wall. 31), though it was contended that the Port Wardens were a necessary part of the machinery of commerce, and thus indirectly serviceable to every vessel. So a nominal fee on passengers for hospital purposes has been declared to be illegal. So, also, in the case of the fees for Harbor Masters.

In all the decisions of this Honorable Court, the point is directly and pointedly made, that unless the sum imposed on the vessel is for a direct service to the vessel, proportioned to the amount claimed, it is a reprobated tonnage duty.

This is clearly stated in numerous cases. (See 6 Wall. 31; 12 Wall. 218; 19 Wall. 581; 20 Wall. 580; 92 U. S. 259; 94 U. S. 238; 95 U. S. 80; 100 U. S. 423; 105 U. S. 166.)

The case of Peete vs. Morgan (19 Wall. 581) is directly in point, as it is one where the Statute imposed a tax to pay quarantine expenses; but, unlike the Louisiana Statute, it is provided that the *whole fund realized from the tax* should be used for quarantine purposes. This Honorable Court recognizes the power of the States to establish a quarantine system, but pointedly denies the right of the State to impose charges on vessels to support the system.

The Court says:

"It is evident that the power to establish quarantine regulations cannot be executed without the State possesses the means to raise a revenue for their enforcement, but it is equally evident that the means used for this purpose must be of such a character as the restrictions imposed by the Federal Constitution upon the taxing power of the States authorize. We are not called upon in this case to go into the general subject of the limitations imposed by these restrictions, because *the tax in question is manifestly outside the jurisdiction of the State* to impose; as it is a 'duty of tonnage,' within the meaning of the Constitution.

"This duty was doubtless imposed to raise revenue, but Chief Justice Marshall, in commenting on this subject in *Gibbons vs. Ogden*, says: 'It is true, that duties may often be, andin fact often are, imposed on tonnage, with a view to the regulation of commerce; but they may be also imposed with *a view to revenue;* and it was, therefore, a prudent precaution to prohibit the States from exercising this power.' This power cannot be exercised without the permission of Congress, and Congress has never consented that the States should lay any duty on tonnage. On the contrary, so apprehensive was Congress that its legislation in 1799 (1 Stat. at Large, 619), directing the the collectors of customs and officers commanding forts and revenue cutters to aid in the execution of the quarantine and health laws of the States, rendered necessary on account of the *prevalence* of yellow fever in New York, might be construed into an admission of the right of the States to lay this duty, that it used the following words of exclusion: 'That nothing herein shall enable any State to collect a duty of tonnage or impost, without the consent of the Congress of the United States thereto.'"

If it be contended that the tax is for the benefit of commerce, and thus indirectly a service to vessels for which they should pay, we answer that precisely the same argument was used in

defense of the tax for the Harbor Masters in New York, and also in Louisiana. (Inman vs. Tinker, 94 U. S. 243; 6 Wall. 31).

In the Louisiana case it was urged that this body of men was extremely useful, as the shipping interest was protected by them; but the Court said: "It may be true that the existence of such a body of men is beneficial to commerce, but the same is true of the government of the State, of the city government, of the whole body of public functionaries. If the constitutionality of the charge for the benefit of the master and wardens can be maintained upon the ground that it secures *compensation for services*, it is difficult to perceive upon what ground the constitutionality of any law imposing taxes for the benefit of the State government, upon vessels landing in its ports, can be questioned" (6 Wall. 31).

That the money realized from this source is regarded as part of the revenues of the State for State purposes is shown by the intervention in this suit of the State of Louisiana *on that ground.*

It is urged, that when the Constitution declares that "No State shall levy a duty of tonnage," etc., it was meant that an exception was to be made for health and police and port purposes; that a quarantine system was in existence at the time of the Constitution, supported by duties on vessels, and that the system was recognized. But the language and object of the prohibition forbid such construction. When exceptions in the Constitution were designed they were *expressly* made.

Thus, in the matter of "inspections," the Constitution (Art. 1, Sec. 10, § 2) declares, that no State shall levy any impost on imports or exports, "*except* what may be absolutely necessary for executing its inspection laws," and it has been decided by this Honorable Court, that "the exception was made because the tax would otherwise have been within the prohibition." (12 Wheat. 420). The exception, too, is very carefully guarded. The tax

can be imposed only on imports and exports (not on the vessel); it can be imposed only when *absolutely* necessary, "and the net produce, * * * shall be for the use of the Treasury of the United States, and all such laws shall be subject to *the revision and control of Congress.*"

Now, if there exists an exception to the prohibition to impose tonnage duties on vessels for quarantine and port purposes, *where is the limit to the power to be found?* Who shall say what the sum shall be which is to pay quarantine expenses, or what shall strictly constitute quarantine expenses? The Constitution provides that tonnage duties may be imposed with the consent of Congress, and in such case it is presumed that Congress would impose necessary safeguards. This Court has said that if a tax is required, which is otherwise forbidden, "it is presumed that Congress would not withhold its assent, if properly informed and its consent requested." (20 Wall. 580.)

II.

The Statutes named are null and void, because they regulate commerce.

The history of the commerce clause in the United States Constitution, the many attempts by the States to disregard it, and the numerous decisions of this Honorable Court declaring State enactments null, show the importance of the subject. Many Statutes, relating to Harbor Masters, Port Wardens, Wharves, Passengers, Quarantine, etc., have been enacted by the States and annulled, in consequence of their disregard of the constitutional prohibition. In most of these cases the State sought to do indirectly what could not be done directly. In all of them, where duties were imposed, it was contended that no tax existed because the charge was, in some vague way, for services rendered.

In this case it is contended that the enormous exactions imposed on vessels, with power in State officers to seize and detain are not prohibited taxes or regulations of commerce, because,

1st, quarantine laws were in existence when the Constitution was adopted, and tacitly recognized by that instrument with all their incidents, including that of unrestricted power to impose duties for their maintenance; and 2d, that the charge is not a tax because an exaction for services rendered to the vessel. That in every case, though the exaction be arbitrarily assessed, the vessel gets the precise value in services for the money it pays.

A few words on the history of the "commerce" clause in the Constitution, and a reference to the action of Congress under it, at a time when many men, who had been in the Constitutional Convention were in Congress, will, we think, serve to show that the contention that the right to maintain quarantine systems by imposing taxes on vessels is wholly untenable.

Curtis, in his History of the Constitution, Vol. 2, p. 370. says:

"It was perhaps capable of being contended, that, as the regulation of commerce was already agreed to be vested in the general government, the States were restrained by that general provision from laying tonnage duties. *The object of the special restriction was to make this point entirely certain;* and the object of the proposed exception was to divide the commercial power, and to give the States a concurrent authority *to regulate tonnage for a particular purpose. But a majority of the States considered the regulation of tonnage an essential part of the regulation of trade. They adopted the suggestion of Mr. Madison, that the regulation of commerce was in its nature indivisible, and ought to be wholly under one authority. The exception was accordingly repealed.*"

But, if possible, the action of both the States themselves and of Congress, for the first ten years after the adoption of the Constitution, shows more conclusively the intention to vest in Congress the exclusive power to regulate commerce, even as to charges to defray cost of quarantine.

In most of the States, at the time of the adoption of the Constitution, quarantine regulations generally appear to have been of

the most primitive character. At most of the ports there was a quarantine physician, who visited vessels from suspected ports, and gave certificates, in case of healthy condition of the vessel, which entitled the vessel to enter the port, and he charged the vessel a small fee for his labor. But, after the adoption of the Constitution, it seems clear that even this small fee could not be collected without the consent of Congress. In some cases it is to be presumed that the State or city paid its own quarantine expenses, but it is clear that where the State sought to make commerce pay, the consent of Congress was deemed necessary, and, accordingly, at an early date, we find permission asked and granted for the imposition, on vessels, of a very small tax to pay the quarantine physician. In the Statutes of 1794 (1st Statutes at Large, p. 393), we find: "An Act declaring the consent of Congress to an Act of the State of Maryland, passed 28th day of December, 1793, for the appointment of a *health* officer," for the port of Baltimore, "so as to enable the State aforesaid to collect a duty of one cent per ton on all vessels coming in the district of Baltimore from a foreign voyage, for the purposes in the said Act intended." Thus clearly showing that neither the State of Maryland nor Congress recognized the rights of the State to impose this duty to defray the costs of the simple quarantine system then existing. Small as this change was, and limited as the power sought, the action of Congress was so guarded as to provide, "that this Act shall continue in force to the end of Congress and *no longer*." It did, however, last much longer; but only by repeated applications and renewed consent. (See 1st Statutes at Large, 425, 462, 546; 2 Vol., Statutes at Large, 103, 316).

Georgia pursued the same course. In 1811, Congress granted its sanction to an Act of that State, "establishing the fees of the Harbor Master *and Health Officer* of the ports of Savannah and St. Mary," and again, qualified its consent by the proviso that

the Act should be in force "one year and no longer" (2 Statutes at Large, p. 658). In 1813, this consent was extended for one year and "no longer" (2 Statutes at Large, p. 820).

In 1806, consent of Congress was given to authorize the city council of Charleston to impose a duty "for the purposes therein mentioned;" limited to three years (2 Statutes at Large, 357). This was extended, in 1809, for five years (2 Statutes at Large, p. 549). We do not know what the purposes were, as we have not the acts before us.

Finally, we have the general quarantine Act of Congress of 1799 (1 Statutes at Large, p. 1799).

In 1795, 1796, 1797 and 1798, the yellow fever prevailed to an alarming extent, extending as far north as ports in Massachusetts. The discussions in Congress on the subject of quarantine show a diversity of opinion as to power in the States to establish and enforce quarantine regulations. President Adams, in his address to Congress in December, 1798, asks legislation in aid of the health laws of the respective States, and suggests that Congress should frame a system for the purpose. So far as we have seen, the question as to the power of the States to compel commerce to defray the expense of a quarantine system, or to vest the power in the States, was not even discussed. The agitation of the subject resulted in the passage of an Act of Congress, the first section of which reads as follows:

"The quarantine and other restraints which shall be required by the health laws of any State, or pursuant thereto, respecting any vessels arriving in, or bound to, any port or district thereof' whether from a foreign port or place, or from another district of the United States, shall be duly observed by the Collectors," (and other Federal officers) etc.

"*Provided, That nothing herein shall enable any State to collect a duty of tonnage or impost, without the consent of the Congress of the United States.*" (Acts 1779, 1st Statute, p. 619.)

Chief Justice Marshall, in commenting on this Act of 1799, in the case of Gibbons vs. Ogden (9 Wheaton, 205), says: "It is true that duties may often be, and in fact often are, imposed on tonnage, with a view to the regulation of commerce; but they may be also imposed with a view to revenue; and it was, therefore, a prudent precaution to prohibit the States from exercising this power."

And this opinion is adopted and endorsed by the Court in the case of Peete vs. Morgan (19 Wall. p. 583).

With what propriety, then, can it be insisted that the framers of the Constitution found a quarantine system in existence, and recognized and adopted it, with the power vested in the States to impose unlimited taxation for its support, when we find the Convention refusing to make any exception to the commerce clause in that instrument, and the States and Congress, within ten years after the adoption of the Constitution, recognizing the fact that no duties could be imposed, or regulations of commerce created, without the special consent of Congress.

And, as we have seen, it has been decided that without an express exception to the prohibiting clauses of the Constitution, no exception could exist (Brown vs. Maryland, 12 Wheaton, 420).

It is contended, in the second place, that this exaction is not a duty, but a charge for a service rendered to the vessels themselves, in which they receive a full equivalent for the precise sum paid. Sometimes defendant contends that commerce is benefitted by quarantine laws, and vessels, as vehicles of commerce, are thus benefitted; and again, it is insisted that, in some manner not made particularly clear, these vessels are *directly* benefitted by the detention and inspection at the quarantine station, though coming directly from a healthy port, and that such service is worth the arbitrary sum fixed by the Legislature. The small steamer belonging, perhaps, to a line from a neighboring healthy

port, making daily trips, and the great steamship coming from a distant port, pay precisely the same duty; but both, it is contended, receive full equivalents for the sum paid in being permitted to come to the city, when, it is said, they might be otherwise detained indefinitely at quarantine. The answer to all this is to be found in the decisions of this Court on the subject of the regulation of commerce.

Defendant has thus far furnished us with but a single reference to authority in this Court, supposed to sustain the proposition that the States may impose charges to defray quarantine expenses. It is that of Mr. Justice Wayne (Passenger case, 7 Howard, 414), who says that the States of the Union "may pass quarantine and health laws, interdicting vessels coming from foreign ports or ports within the United States from landing passengers and goods, prescribe the place and time for vessels to quarantine, and impose *penalties* upon persons for violating the same." To all this it is only necessary to say, that in the first place, no question of quarantine was before the Court; second, that the opinion was that of one Judge only; that it speaks only of penalties for violations of law, and finally, that this Honorable Court has recently said that the decision in the case referred to was not entitled to much weight, as "each member of the Court delivered a separate opinion;" "none of them professing to be the authoritative opinion of the Court." (92 U. S. 259.)

While, then, we have been favored with no opinion supporting the views of defendant on this point, we have numerous decisions of this Court denying the power claimed, and, one, directly on this point of quarantine. (Peete vs. Morgan, 19 Wall. 581.) We propose to review, as briefly as possible, the several cases, and ask attention, first, to that specially on quarantine, which we believe to be conclusive of this matter.

The only difference between the Peete case and that now before

the Court is, that in the Peete case the charge is by the ton, and the Statute states that the fee is for quarantine purposes, without stating specifically that it is for the inspection. As to the tonnage point, this Court has frequently decided that there is no difference as to the constitutionality of a Statute, whether the tax be measured by the ton, or imposed on the vessel (6 Wall. 31; 12 Wall. 218; 20 Wall. 580).

As to the purpose for which the tax is imposed, there should be no doubt. In both States the vessel is inspected before admission into port, and if it is the inspection that is worth the price demanded in Louisiana, and makes the Act constitutional, there can be no reason why it should not be worth it in Texas. In other words, the "service" rendered the vessel is the same in Texas as in Louisiana, and if the Statute in Louisiana is constitutional, because the vessel is paying a charge for services rendered to the vessel itself, and equal to the amount demanded, then the Statute in Texas is constitutional for precisely the same reason. Yet, upon a supposed difference on this point, the Supreme Court of Louisiana decided that the decision in the Peete case was inapplicable to the quarantine system in Louisiana. There is one point, however, in favor of our construction of the law of Louisiana, which is not to be found in the Texas law, and that is, that it will be seen by reference to the Peete case, that in Texas the *whole amount* recoverable from quarantine taxes is devoted to the payment of quarantine expenses; while in Louisiana much of the money is used, as we have before said, to pay the salaries of officers of the Board of Health, whose duties, as we have seen, extend to many things besides quarantine business, and to the payment of expenses not of a quarantine nature.

On this point, that taxes cannot be imposed on vessels to defray the expenses of a quarantine system, and as to the right to detain vessels not paying such charges, without violating the

"commerce" provision of the Constitution, the case of Peete vs. Morgan (17 Wall. 583) is conclusive. The Court says:

"This duty was doubtless imposed to raise revenue, but Chief Justice Marshall, in commenting on this subject in Gibbons vs. Ogden, says: 'It is true, that duties may often be, and in fact often are, imposed on tonnage, with a view to the regulation of commerce; but they may be also imposed with a view to revenue; and it was, therefore, a prudent precaution to prohibit the States from exercising this power.' This power cannot be exercised without the permission of Congress, and Congress has never consented that the States should lay any duty on tonnage. On the contrary, so apprehensive was Congress that its legislation in 1799, (1 Stat. at Large, 619) directing the collectors of customs and officers commanding forts and revenue cutters to aid in the execution of the quarantine and health laws of the States, rendered necessary on account of the prevalence of yellow fever in New York, might be construed into an admission of the right of the States to lay this duty, that it used the following words of exclusion: 'That nothing herein shall enable any State to collect a duty of tonnage or impost, without the consent of the Congress of the United States thereto.'"

It is not our purpose to express an opinion as to what the Court referred to, when it intimated that there might be a mode of constitutionally imposing a charge for such purposes; but we infer that the Court meant, what was distinctly said in the case of Cannon vs. New Orleans (20 Wall. 580): "If the just necessities of a local commerce require a tax which is otherwise forbidden, it is presumed that Congress would not withhold its assent, if properly informed and its consent requested." And the Court adds: "This is a much wiser course, and Congress is a much safer depositary of the final exercise of this important power," than cities burdened, as some of them are, with heavy debts.

The quarantine Statute of Texas was annulled by the decision in the Peete case. Yet Texas ports are to-day more rigidly quarantined than those of any other places in the South, and, we presume, the small expense is paid by the people of the State as they pay for other health measures. There can be no valid reason why a State should not pay expenses to prevent the introduction of disease, as well as those to maintain public health.

Besides the case of Peete vs. Morgan, this Court has frequently decided that the imposition of charges on vessels plying between ports of different States, *except* as payment for services rendered directly to the vessel, and proportioned to the service, it is a prohibited regulation of commerce.

The only instance where it is contended that there has been a relaxation of the rule is in the case of pilotage; but even that has been placed upon a ground showing no exception, but rather a confirmation of the principle.

In the pilot cases, reported in 12 Howard, p. 312, this Court said, "there were many cases in which an offer to perform, accompanied by present ability to perform, is deemed by law equivalent to performance;" and in the case of the Steamship Co. vs. the Joliffe, 2 Wall. 456, it was said that "the claim for half pilotage, it is true, was given by the statute, but only in consideration of services tendered." "If the services tendered are declined, the half fees allowed are by way of compensation for the exertions and labor made by the pilot, and for the expenses and risks incurred by him in placing himself in a position to render the services, which in the urgency of the cases would be required. The transactions in this latter case, between the pilot and the master and owners, cannot be strictly termed a contract, but it is a transaction to which the law attaches similar consequences; *it is a quasi contract.*" Now, in what does this resemble the quarantine claims? There is no offer to render to owners of

vessels a service; no service is rendered to the vessel itself in stopping her to ascertain whether or not disease exists on her. The service is for the community, and to the great annoyance and inconvenience of the ship owners.

This point was again presented and summarily disposed of by the United States Supreme Court in the Port Warden cases (6 Wall. 31). The counsel for the Port Wardens in that case stated the defense in this language: "The fee is to be paid wardens for the same reason that half pilotage is to be paid to pilots, when they offer their services, although the services are not accepted." "The office and functions of port wardens are as indispensable, for the purposes of navigation and commerce, as the office and functions of pilots." But the Court, through Chief Justice Chase, said the answer was, first:

"That no Act of Congress recognizes such laws as that of Louisiana as proper and beneficial regulations, while the State laws, in respect to pilotage, are thus recognized.

"The second is, that the right to recover pilotage and half pilotage, as prescribed by State legislation, rests not only on State laws, but upon contract. Pilotage is compensation for services performed; half pilotage is compensation for services which the pilot has put himself in readiness to perform by labor, risk, and cost, and which he has actually offered to perform. But in the case before us there were no services and no offer to perform any. The State law is express. It subjects the vessel to the demand of the master and wardens, 'whether they be called on to perform any service or not.'

"It may be true, that the existence of such a body of men is beneficial to commerce, but the same is true of the government of the State, of the city government, of the courts, of the whole body of public functionaries."

If the argument based upon a pilotage charge be good for quarantine charges, then it is good for port warden, harbor

master, wharfage taxes, and the other numerous things for which States are constantly endeavoring to impose forbidden fees. And if it be valid for a charge of thirty dollars per vessel, it will be equally efficacious for a charge thrice that sum—and quarantine "expenses" may be made to cover a multitude of objects and officers. Even now it will be seen that the Board of Health performs various duties in no manner connected with quarantine, and officers are paid whose duties do not pertain strictly to quarantine service.

This Court has decided that charges for the following purposes are not only in violation of the tonnage provision of the Constitution, but also of that regulating commerce:

Port Wardens: 6 Wall. 31.

Quarantine: 19 Wallace, 581; 95 U. S. 465.

Harbor Masters: 94 U. S. 238.

Wharves: 20 Wallace, 580; 95 U. S. p. 80; 100 U. S. p. 434; 100 U. S. 423; 100 U. S. 430.

(It is contended that these later cases are at variance with the Cannon case, 20 Wall. 589; but a careful reading of them shows that they affirm all that was before said on the subject of charges for wharves unless a special service to the vessel.)

Passengers: 9 Wheaton, 205; 7 Howard, 383; 92 U. S. 259; 92 U. S. 275; 107 U. S. 60.

License tax on vessels: Tug boats, 112 U. S. 169; ferry boats, 114 U. S. 197.

State tax on vessels: 17 Howard, 596; 16 Wall. 471.

It is contended in this case, however, that the charge imposed for quarantine purposes is a service *to the vessel*, and proportioned to the amount of benefit she receives. This contention derives support from the decision of the State Supreme Court; but it is proper, in this connection, to invite attention to the fact that the State Court was by no means confident of the correctness of its position, for it says: "What we have said sufficiently expresses

our views on the subject, and while the question is not free from doubt, even to our own minds, we are confirmed in our course by the reflection that it leaves the avenue open for correction of any error which we may commit, by appeal to the Supreme Court, etc."

The Court says that it is the duty of the vessel to seek to prevent the spread of disease, and adds, as a reason for declaring the charge compensation for services, that "she is under the plain obligation, moral as well as legal, to do everything to avoid such risk, and the service which enables her to perform this obligation *would seem to be a service to her.*" And again the Court says:

"It is apparent from the face of the laws here attacked, that the fees and charges complained of are demanded as compensation for labors performed, expense incurred, and services rendered directly in connection with the vessels, the necessity for which arises solely from the fact that such vessels, in the exercise of an undoubted right, yet voluntarily and in pursuit of their own interests, choose to seek the port of New Orleans, well knowing that they cannot enter said port without first being inspected, and if necessary, purified in conformity with laws to that extent unquestionably valid. Can it be said that the rendition of those services, by virtue of which alone the vessel is enabled, lawfully, to proceed to her destined port, is not a service to the vessel?"

The argument would seem to be, that, as the State declares that the vessel shall not *enter* the port without going through certain forms forced upon her for the supposed benefit of the public, she is benefitted by being permitted to enter the port on payment of a sum of money arbitrarily assessed and fixed, without the slightest regard to the extent of service she is supposed to have received. This argument is fully answered in the case of Henderson vs. New York and Louisiana, 92 U. S. p. 259.

In that case, for a purpose within the police powers of the State, an Act was passed by the State of New York to protect

the State from foreign pauperism, requiring, in substance, the masters of vessels from foreign ports to report to the Mayor of the City of New York a description of passengers, and the captain was required to give bond, conditioned to indemnify the State, etc., against expense incurred for the support by the State, etc., of the passengers thus brought; *but giving to the captain the option of paying one dollar and fifty cents for each passenger.* Another case (reported in 92 U. S. S. C. 275), presenting the same points, was decided at the same time. The Court decided the statutes to be unconstitutional, and, referring to the Passenger cases (7 Howard, p. 414), said, that decision was not entitled to much weight, as "each member of the Court delivered a separate opinion," "none of them professing to be the authoritative opinion of the Court." The Court there say (p. 269), that the "requirements of a catalogue of passengers (as decided in case of New York vs. Milne, and the Passenger cases), with statement of their last residence and other matters of that character, *is a proper exercise* of State authority, *and that the requirement of the bond, or the alternative payment of money* for each passenger, *is void, because forbidden by the Constitution and laws of the United States.*" The Courts adds, "nothing is gained in the argument by calling it the police power." * * "It is clear that, from the nature of our complex form of government, that whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States." "Whatever subjects of this power (commerce) are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." (See also the case on page 275 of the same volume.)

In the case of New York vs. The Compagnie General Transatlantique (107 U. S. p. 60) the Statute declared to be unconstitu-

tional imposed a small charge for several purposes of *police and* health, and among others "*to guard against disease.*" The Court said:

"This was a suit brought by the State of New York against the steamship company to recover the sum of $7,700, alleged to be due the State by virtue of a Statute of New York, passed May 31, 1881, entitled: 'An Act to raise money for the execution of the inspection laws of the State of New York.' Section 1 of this Act, under which the present suit was brought, is as follows:

"'There shall be levied and collected a duty of $1 for each and every alien passenger who shall come by a vessel from a foreign port to the port of New York, for whom a tax has not heretofore been paid—the same to be paid to the chamberlain of the City of New York by the master, owner, agent or consignee of every such vessel within 24 hours after the entry thereof into the port of New York.'"

Justice Miller, who delivered the opinion of the Court, said that "it had been *so repeatedly decided by this Court that such a tax as this is a regulation of commerce with foreign nations, confided by the Constitution to the exclusive control of Congress*, and this Court has so recently considered the whole subject in regard to similar statutes of the States of New York, *Louisiana* and California, that unless the Court is prepared to reverse our decisions and the principles on which they are based in the case of Henderson vs. the Mayor of New York, and Chy Lung vs. Freeman (92 United States Reports, 259–275), there is little to say beyond affirming the judgment of the Circuit Court, which was based on these decisions." The argument mainly relied on in the present case, Justice Miller in substance says, is that the new Statute of New York (passed after her former statute had been declared void in the "passenger cases," 7 Howard, 383, and in the recent case of Henderson vs. the Mayor) is in aid of the inspection laws of the State.

"These statutes differ from those heretofore held void only in that they are called in their caption 'inspection laws,' and in that provision is made for the payment of any surplus after the support of paupers, criminals and diseased persons, into the Treasury of the United States—a surplus which, in this enlarged view of what are the expenses of an inspection law, it is safe to say will never exist. A State cannot make a law designed to raise money to support paupers, to detect or prevent crime, *to guard against disease*, and cure the sick, an 'inspection' law, within the constitutional meaning of that word, by calling it so in the title. The judgment of the Circuit Court is affirmed."

In this case the Louisiana Supreme Court decides that the quarantine "charges must be *proportioned to the services*," meaning, of course, the service to each vessel, and then inconsistently determines that they have been proportioned to the services, because the net product of dues from the Mississippi River Station are not more than sufficient to pay the quarantine expenses of the State. In one case the measure being the service to the vessel, in the other the needs of the State. We have already seen that much of the money realized from quarantine charges go to pay other than quarantine expenses; but, conceding that the receipts are not equal to quarantine expenses, we contend that the measure of the charge, supposing the charge itself to be constitutional, is not the requirements of the State but the value of the service to the vessel. Surely, it will not be contended that small steamers, making daily trips to and from healthy neighboring ports, receive as much "service" each trip from the system as large vessels from distant ports! Yet, all are charged alike; and not proportioned to the service. The service rendered to a steamer from a healthy port is a visit by the quarantine physician to her in the river, inquiry as to the port whence she comes, and delivery to her of a certificate of health; and this is the service

to the steamer, be she large or small, for which she is to pay daily or weekly, as the case may be, thirty dollars for every trip.

Finally, on this subject of the power of Congress to regulate commerce, and State interference with it, by the imposition of duties, we ask attention to the recent case of the Gloucester Ferry vs. Pennsylvania (114 U. S. p. 204). Speaking of the power of Congress in relation to commerce, this Court says:

"Necessarily that power alone can prescribe regulations which are to govern the whole country. And it needs no argument to show that the commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by State legislation. Otherwise, there would be no protection against conflicting regulations of different States, each legislating in favor of its own citizens and products, and against those of other States. It was from apprehension of such conflicting and discriminating State legislation, and to secure uniformity of regulation, that the power to regulate commerce with foreign nations and among the States was vested in Congress."

"In Reading Railroad Co. vs. Pennsylvania, sometimes called the Case of the State Freight Tax, 15 Wall. 232, it was held that the act of the Legislature of Pennsylvania requiring railroad companies to pay to the State Treasurer, for the use of the Commonwealth, a tax on each two thousand pounds of freight carried was unconstitutional and void, so far as it affected commodities transported through the State, or from points without the State to points within the State, or from points within the State to points without it, as being a regulation of inter-State commerce. The court said that the imposition of the tax, whether large or small, was a restraint upon the privilege or right to have

the subjects of commerce passed freely from one State to another without being obstructed by the intervention of State lines. Its payment was a condition upon which the prosecution of that branch of commerce was made to depend, and its imposition therefore was in conflict with the power of Congress over the subject."

"Still the fact remains that such a ferry is a means, and a necessary means, of commercial intercourse between the States bordering on their dividing waters, and it must, therefore, be conducted without the imposition by the States of taxes or other burdens upon the commerce between them. Freedom from such impositions does not, of course, imply exemption from reasonable charges, as compensation for the carriage of persons, in the way of tolls or fares, or from the ordinary taxation to which other property is subjected, any more than like freedom of transportation on land implies such exemption. Reasonable charges for the use of property, either on water or on land, are not an interference with the freedom of transportation between the States secured under the commercial power of Congress. Packet Co. vs. Keokuk, 95 U. S. 80; Packet Co. vs. St. Louis, 100 U. S. 423; Vicksburg vs. Tobin, 100 U. S. 430; Packet Co. vs. Cattlesburg, 105 U. S. 559; Transportation Co. vs. Parkersburg, 107 U. S. 691. That freedom implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property."

See also 112 U. S. p. 69. We rely also on the case of Railroad vs. Husen, 95 U. S. p. 465, to which we shall refer hereafter.

III.

We also contend that by these Acts, imposing charges *exclusively* on vessels passing the Mississippi River Quarantine Station, preference is given to vessels from the ports of one State over

those of another, and duties imposed on vessels bound from one State to another, in contravention of paragraph six, section nine, of the first Article of the United States Constitution.

Steamers coming from States bordering on the river north of Louisiana pay no quarantine duties whatever, nor do vessels coming from Florida, or Texas, or Alabama, by way of the Rigolets, in Louisiana. Steamers coming daily from Mobile pay nothing, while Galveston steamers pay thirty dollars every trip.

The only quarantine tax imposed is on vessels passing the station on the Mississippi River below New Orleans. *From all other directions*, except in time of epidemics, *the port is open and free.* No more striking commentary could be made on the worthlessness, if not the absurdity, of the whole system, than the statement of this undisputed fact. Not only steamers but trains come into New Orleans, free from duty or detention, from all parts of the United States, while only vessels from the Gulf (*and that through one door only*) are restricted.

There have been directly two decisions on the point of discrimination by the United States Supreme Court. In the first (Inman vs. Tinker, 94 U. S. S. C. p. 243) the Court say:

"The Act makes a *discrimination.* To one class of vessels it applies the rate here in question; to another class double that rate, and to yet another class none at all." "The *commerce* clauses of the Constitution had their origin in a wise and salutary policy. They give to Congress the entire control of the foreign and inter-State commerce of the country. They were intended to secure harmony and *uniformity* in the regulations by which they should be governed. Wherever such commerce goes, the power of the nation accompanies it, ready and competent, as far as possible, to promote its prosperity and redress the wrongs and evils to which it may be subjected. It was deemed especially important that the State should not impose tonnage duties. Hence, the prohibition in the Constitution, without the assent of Congress

previously given. The confusion and mischief that would ensue if this restriction were removed, are too obvious to require comment. The lesson upon the subject taught by the law before us is an impressive one."

In the second case (that of Guy vs. Baltimore, 100 U. S. S. C., p. 434), the City of Baltimore discriminated in favor of the State of Maryland as against other States. The language of the Court cannot be misunderstood. It says:

"But it claimed that a State may empower one of its political agencies, a mere municipal corporation representing a portion of its civil power, to burden inter-State commerce by exacting from those transporting to its wharves the products of other States wharfage fees, which it does not exact from those bringing to the same wharves the products of Maryland. The City can no more do this than it or the State could discriminate against the citizens and products of other States in the use of the public streets or other public highways. The City of Baltimore, if it chooses, can permit the public wharves, which it owns, to be used without charge. Under the authority of the State, it may also exact wharfage fees equally from all who use its improved wharves, provided such charges do not exceed what is fair remuneration for the use of its property. Northwestern Packet Co. vs. St. Louis, and Vicksburg vs. Tobin, decided at the present term; Packet Co. vs. City of Keokuk, 95 U. S. 80. But it cannot employ the property it thus holds for public use so as to hinder, obstruct, or burden inter-State commerce in the interest of commerce wholly internal to that State. The fees which it exacts to that end, although denominated wharfage dues, cannot be regarded, in the sense of our former decisions, as compensation merely for the use of the City's property, but as an expedient or device to accomplish by indirection, what the State could not accomplish by a direct tax, viz., build up its domestic commerce

by means of unequal and oppressive burdens upon the industry and business of other States."

"Such exactions in the name of wharfage must be regarded as taxation upon inter-State commerce. Municipal corporations owning wharves upon the public navigable waters of the United States, and *quasi* public corporations transporting the products of the country, *cannot be permitted by discriminations of that character to impede commercial intercourse and traffic among the several States and with foreign nations.*

"The power of the national government over commerce with foreign nations and among the several States, is broad and comprehensive. It reaches the interior of every State of the Union, so far as it may be necessary to protect the products of other States and countries from discrimination by reason of their foreign origin. Brown vs. Maryland, 12 Wheat."

"Nothing can be clearer than that the statute of Maryland and the ordinance of the City of Baltimore, in the respects adverted to, are in conflict with the power of Congress over the subject of commerce." (See also 95 U. S. p. 465.)

The Court will see that the above case, decided in 1879, not only disposes of the point as to discrimination, but reviews former cases on the commerce question, and decides that wharf charges are only legal when "they do not exceed *what is fair remuneration for the use of the property.*"

We have thus far made no special reference to the statutes imposing extra charges for fumigation. The principal statute on that subject is that of 1876, p. 116. Under that Act, the alleged cost of fumigation is charged to vessels from infected ports, after due proclamation has been made by the Governor. The charge is measured and assessed in an arbitrary manner, and without apparent reference to actual cost. (Record, p. 25.) A perusal of the testimony will, we are convinced, satisfy this Court that the attempt to fumigate large steamships, loaded with merchandise, by

the use of a small quantity of sulphur, carbolic acid and copperas, could hardly be dignified with the name of a system. Indeed, it is a matter of which the Court will perhaps take notice, that the whole system has been radically changed. On this point of charge for fumigation, that no service is thereby rendered the vessel, the decisions heretofore cited will apply with equal force, as to the charge for certifiates of inspection.

IV.

One of the most important questions presented by this case is, whether the system created by the Louisiana Statutes, by which vessels from neighboring healthy ports are detained and heavily taxed, is, in any proper sense, a quarantine system at all. Are the regulations created by these Statutes, so detrimental to commerce, at all necessary for self-protection, or rather are they not ingenious devices to fill the coffers of a depleted treasury? The Act of 1882 provides for the detention and inspection of all steamers passing the Mississippi River Station, and a charge of thirty dollars on every steamer is imposed for this "service" to the steamer. If the detention be not *necessary*, it cannot be justified.

Is it necessary, or required by any dictate of prudence, that steamers making daily trips from Galveston or Mobile should be stopped for inspection? Is not the mode of the so-called inspection itself an answer to the question? That mode consists mainly in asking the captain a few questions, and permitting him to pass on payment of his dues. For this service a line of two or three small steamers making daily trips from Mobile, or Galveston, or Pensacola, would pay $30 a day—*or over $10,000 per annum for the simple privilege of* entering a Louisiana port!

The question, then, that arises is, can this Louisiana plan be called a quarantine system so far as to bring it within the reserved police powers of this State? Quarantine, as formerly known to the world, was the detention of vessels for a certain number of days (usually forty), which, having arrived from an infected port, or

reasonably supposed to be infected, for the purpose of disinfecting her, and thus preventing, by infection or contagion, the spread of dangerous diseases. In the Act of Congress granting to Maryland power to tax vessels for payment to quarantine physicians, it was provided: "So as to enable the State aforesaid to collect one per cent. on all vessels coming in the District of Baltimore from a *foreign* voyage." This was in 1794 (1st Statutes 393). If the tax imposed by the Louisiana Statutes be permissible on vessels from the Gulf, it can be imposed with equal propriety on steamers descending the rivers; and other States can, of course, impose similar taxation; so that a steamer descending the river from Pittsburgh to New Orleans could be made to pay the inspection fee to every State through which she passed. Nor is this all. For if the Louisiana system be legal, no good reason exists why trains of cars entering the State should not be detained and inspected and taxed—the danger being quite as great to the health of New Orleans from disease brought by railroads from Memphis or Vicksburg as by steamships from Galveston.

The truth is, that the system—if such it may be called—wholly ignores all the changes made by the application of steam to land travel and transportation. The folly of stopping and inspecting steamers, while permitting trains of cars to come in freely, must be apparent to the most unobserving. An incident, which actually occurred in the practical operation of the Louisiana system, will sufficiently illustrate our meaning. A few years ago one of the "Morgan" steamers from New York was detained a day at the Mississippi Quarantine Station because there was smallpox in New York, while at that time trains were daily arriving from New York loaded with passengers and freight, and boats, uninspected, came down the river from towns on the Mississippi, where smallpox prevailed to a greater extent than in New York.

This Court has decided several times that inter-State commerce

cannot be obstructed by the police powers of a State "*beyond the necessity* for its exercise." In times of good health throughout the country there can be no *necessity* for the detention, inspection and taxation of home vessels, and particularly where intercourse by railroad and river boats remains unimpeded.

One of the most conclusive opinions on this subject is that of this Honorable Court in the case of Railroad vs. Husen (95 U. S. p. 465). In that case a Statute of Missouri prohibited the importation of Texas or Mexican cattle into the State between the first of March and first of November of every year. The Court decided that the object and effect of the statute were "to obstruct inter-State commerce," and to discriminate between the property of citizens of one State and that of citizens of other States; and adds: "This Court has heretofore said that inter-State transportation of passengers is beyond the reach of a State legislature. And if, as we have held, State taxation of persons passing from one State to another, or a State tax upon inter-State transportation of passengers, is prohibited by the Constitution because a a burden upon it, *a fortiori*, if possible, is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation. Case of the State Freight Tax, 15 Wall. 232; Ward vs. Maryland, 12 id. 418; Welton vs. the State of Missouri, 91 U. S. 275; Henderson et al. vs. Mayor of the City of New York et al., 92 id. 259; Chy Lung vs. Freeman et al., id. 275. The two latter of these cases refer to obstructions against the admission of persons into a State, but the principles asserted are equally applicable to all subjects of commerce."

And the Court further says:

"While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc.

from entering the State; while for the purposes of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not under the cover of exerting its police powers substantially prohibit or burden either foreign or inter-State commerce. Upon this subject the cases in 92 U. S. to which we have referred are very instructive. In Henderson vs. The Mayor, etc., the statute of New York was defended as a police regulations to protect the State against the influx of foreign paupers; but it was held to be unconstitutional, because its practical result was to impose a burden upon all passengers from foreign countries. And it was laid down that, 'in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.' The reach of the statute was far beyond its professed object, and far into the realm which is within the exclusive jurisdiction of Congress. So in the case of Chy Lung vs. Freeman, where the pretence was the exclusion of lewd women; but as the statute was more far-reaching, and affected other immigrants, not of any class which the State could lawfully exclude, we held it unconstitutional. Neither of these cases denied the right of a State to protect herself against paupers, convicted criminals, or lewd women, by necessary and proper laws, in the absence of legislation by Congress, but it was ruled that the right could only arise from vital necessity, and that it could not be carried beyond the scope of that necessity. These cases, it is true, speak only of laws affecting the entrance of persons into a State; but the constitutional doctrines they maintain are equally applicable to inter-State transportation of property. They deny validity to any State legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the necessity for exercise wherever it interferes with the rights and powers of the Federal government.

"Tried by this rule, the statute of Missouri is a plain intrusion upon the exclusive domain of Congress. It is not a quarantine law. It is not an inspection law. It says to all natural persons and to all transportation companies, 'You shall not bring into the State any Texas cattle or any Mexican cattle or Indian cattle, between March 1 and December 1 in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not; and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities.' Such a statute, we do not doubt, it is beyond the power of a State to exact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure.

"In coming to such a conclusion, we have not overlooked the decisions of very respectable courts in Illinois, where statutes similar to the one we have before us have been sustained. Yeazel vs. Alexander, 58 Ill. 254. Regarding the statutes as mere police regulations, intended to protect domestic cattle against infectious disease, those courts have refused to inquire whether the prohibition did not extend beyond the danger to be apprehended, and whether, therefore, the statutes were not something more than exertions of police power. That inquiry, they have said, was for the legislature and not for the courts. With this we cannot concur. The police power of a State cannot obstruct foreign commerce or inter-State commerce beyond the necessity for its exercise; and under color of it objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

The recent decision in the case of Gloucester Ferry Co. vs. Pennsylvania (114 U. S. p. 196) reviews the several cases decided

by this Court relating to the powers of the States in matters of inter-State transportation. We have already copied portions of this opinion, but many parts of it apply with especial force to the subject now under consideration: the power of the States to interfere with commerce, under the pretense of maintaining a quarantine system. (See also 6 Wall. 31, 42; 12 Wall. 418; 15 Wall. 232).

We have but little to add. The numerous decisions of this Court, on subjects of commerce and tonnage duties, show a persistent determination, on the part of the States, to weaken, if not destroy, the wholesome limitations on their power in matters relating to commerce. Duties on vessels and passengers have been imposed by State legislation, to support hospitals, to pay salaries of port wardens, of harbor masters, to create wharf revenues and quarantine revenues, and for general purposes of revenue. In each of these cases it was contended that the tax was necessary; but all in turn have been declared to be unconstitutional, and no serious inconvenience has resulted. The quarantine law of Texas was abolished by the decision in the case of Peete vs. Morgan, and now, under a system by which the expense is borne by the State, quarantine appears to be as effective as when it was supported by taxation on commerce. In the case of Inman vs. Tinker (94 U. S. p. 243), this Court said: "It does not advance the argument, in behalf of the appellee, to maintain that the regulations prescribed by the Act *are necessary* in the port in which they are provided;" and again, in the Cannon case (20 Wall. 580), it was said: "If hardships arise in the enforcement of this principle, and the just necessities of a local commerce require a tax which is forbidden, it is presumed that Congress would not withhold its assent, if properly informed, and its consent requested."

Respectfully submitted,

HENRY J. LEOVY,

Attorney for Plaintiff in Error.

ASSIGNMENT OF ERRORS.

There were errors in the judgment of the Supreme Court of Louisiana in this:

First. In deciding that the Louisiana Statutes of 1855 (p. 471); of 1858 (p. 187); of 1870 (Extra Session, p. 84); of 1876 (p. 110); of 1877 (Extra Session, p. 117); and 1882 (p. 89) imposed no tonnage duty, and were not in violation of the third paragraph, tenth section of the first Article of the United States Constitution;

Second. That said Statutes did not create a regulation of commerce and were not in conflict with the third paragraph of the eighth section of the first Article of the United States Constitution; vesting in Congress the exclusive right to regulate commerce;

Third. That said Statutes did not give a preference to vessels from the ports of one State over those of another; nor impose duties on vessels bound from one State to another, in contravention of paragraph six, section nine of the first Article of the United States Constitution;

Fourth. That said statutes did not conflict with any provisions of the United States Constitution, though they imposed duties on vessels to pay salaries of officers performing various duties and other expenses not connected with quarantine;

Fifth. That said Statutes authorizing the detention, inspection and taxing of vessels from neighboring healthy ports were

not regulations of commerce or a violation of any prohibition of the United States Constitution, and that such powers were part of the reserved powers of the States; and

Sixth. That said Statutes were not in confiict with the Act of Congress, approved in 1799 (1st Statutes at Large, p. 16), relating to the regulation of quarantine and providing "that nothing herein shall enable any State to collect a duty of tonnage or impost without the consent of the Congress of the United States."

HENRY J. LEOVY,
Attorney for Plaintiffs in Error.

APPENDIX.

ACT No. 336 OF 1855.

To establish Quarantine for the protection of the State.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That there shall be Quarantine established below the City of New Orleans, on the river Mississippi, at a distance not less than seventy miles by the river from the City. That the Board of Health, to be elected under this Act, is hereby authorized to locate the Quarantine ground, to receive the transfer of the necessary land in the name of the State, and to draw upon the Treasurer of the State for the necessary amount, out of the fund appropriated under this Act; provided the consent of the Governor of the State is given to said purchase.

SEC. 2. *Be it further enacted, etc.*, That there shall be a Board of Health composed of nine competent citizens of the State, to be elected as follows: three by the Council of New Orleans, on joint ballot, and six to be appointed by the Governor, by and with the advice and consent of the Senate. The said members shall be selected with reference to their known zeal in favor of a quarantine system. All the members of the Board shall be commissioned by the Governor for the term of one year, after having filed and subscribed in the office of the Secretary of State an oath well and truly to enforce and comply with the provisions of an Act entitled "an Act to establish Quarantine for the protection of the State," and in case of neglecting or failing to comply with the above required oath, within ten days after their appointment or election, their office shall be considered vacated.

SEC. 3. *Be it further enacted, etc.*, That the Board of Health shall meet once a month from the first of November to the first of June, and once a week from the first of June to the first of November, and as often as they may deem necessary.

SEC. 4. *Be it further enacted, etc.*, That the Board of Health shall meet and organize on the third Monday in April, and elect out of their own number a President, whose duty it shall be to res-

ide in New Orleans and superintend the different quarantine stations of the State, and it shall be his duty to visit them as often as the Board of Health shall deem necessary. He shall have the power to issue, during the adjournment, to Constables or Sheriff, all orders and warrants provided by the provisions of this Act, and shall report to the Attorney General all violations of the same. It shall be his duty to lay before the Board at each meeting the business to be transacted, and a book in which he shall enter copies of all letters written by him, orders and warrants issued, and a detail of all his acts. He shall present at each meeting all communications forwarded to him, and a report of the resident physicians and treasurers, and perform such other duties as shall be assigned to him by the Board of Health. He shall only be removed by impeachment, and shall receive a salary of two thousand dollars a year.

SEC. 5. *Be it further enacted, etc.*, That four members of said Board shall form a quorum; provided however that no contract for building shall be entered into without the consent of a majority of the Board.

SEC. 6. *Be it further enacted, etc.*, That the Board of Health shall authorize the resident physician to employ in case of need an assistant physician at the quarantine ground on the Mississippi river, who shall act as his deputy, and whose salary shall not be more than two thousand dollars a year. The Board of Health shall have power to employ nurses and assistants to attend the sick, and such other persons as may be necessary to carry out proper quarantine regulations, and to fix their compensation; to fix the number of days of quarantine for vessels liable to it under sections ninth and thirteenth of this Act, not to be less than ten days, to determine how said quarantine shall be performed; and to make out all legal regulations not provided by this Act, nor contrary to the same, and necessary to carry out a proper system of quarantine, and to enforce the same by fine not exceeding five hundred dollars; to make rules and regulations for preserving good order and police within the limits of the quarantine ground, and to impose penalties for the breach thereof; to contract for the necessary buildings at the quarantine grounds; to appoint a Secretary, who shall act as Treasurer, whose salary shall be fifteen

hundred dollars a year, and who shall furnish security in a sum of ten thousand dollars. It shall be his duty to keep a minute of the proceedings of the Board, and all vouchers and expenditures made by authority of said Board. The Board of Health shall have power to remove, or cause to be removed, any substance which they may deem detrimental to the health of the city of New Orleans, and the commissioners of streets shall execute their orders, whenever not in conflict with the ordinances of the city or the laws of the State; to pass and enforce sanitary ordinances for the city, provided the same are approved by the council and published as city ordinances, to define the duties of officers employed by them, and impose additional duties on officers appointed under this Act; to issue warrants to any Constable, Police Officer or Sheriff in the State, to apprehend and remove such person or persons as cannot be otherwise subjected to the provisions of this Act, or who shall have violated the same, and whenever it shall be necessary so to do, to issue their warrant to the Sheriff of the city or parish where any vessel may be, having violated the provisions of this Act, commanding him to remove said vessel at the quarantine ground and arrest the officers thereof, all which warrants shall be executed by the officer to whom the same shall be directed, who shall possess the like powers in the execution thereof, and be entitled to the same compensation as if the same had been duly issued out of any court of the State. The Governor shall appoint a police officer, to be designated as Marshal, who shall be under the control of said Board of Health, and reside at the quarantine station on the Mississippi river, whose duties and powers shall correspond to those of a Sheriff or Constable, so far as regards the execution of warrants and arrest of persons for violation of said quarantine regulations, and for said services shall receive the annual allowance of one thousand dollars.

(The remaining Sections are omitted, as inapplicable.)

Approved March 15th, 1885.

ACT No. 269 OF 1858.

Supplementary to an act entitled "an act relative to quarantine," approved March 15, 1855.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*, That

the Board of Health of the State of Louisiana shall authorize the Resident Physician of the Quarantine Station to employ an assistant physician, whose salary shall be two thousand dollars. The Board of Health shall have power to employ nurses and assistants to attend the sick, and such other persons as may be required to carry out proper quarantine duties, and to fix their compensation, also to make all needful rules and regulations for the maintenance of quarantine, and to impose fines not exceeding five hundred dollars for contravention of established rules; the Board of Health shall have power to remove or cause to be removed any substance which they may deem detrimental to the health of New Orleans, and the Street Commissioner shall execute their orders when not in conflict with the ordinances of the City or the laws of the State; to pass sanitary ordinances for the City, provided such are approved by the Council, and published as City ordinances; to define the duties of officers appointed by them, to issue warrants to any constable, police officer, or sheriff, in the State, to issue their warrant to the Sheriff of the City of New Orleans, or of any parish, where any vessel may be, to have such vessel, if they deem it necessary for the protection of health, removed to the Quarantine Station. The fees of said officer shall be paid by the Board of Health. The Board of Health shall have power to extend the period of quarantine, should it be deemed necessary by them.

SEC. 2. *Be it further enacted, etc.*, That the Resident Physician at the Quarantine Station on the Mississippi River shall receive an annual salary of five thousand dollars ($5,000) and shall be appointed by the Governor of the State, with the consent of the Senate, and shall be removable at the will of the Governor. It shall be the duty of the Resident Physician, or his assistant, to visit and inspect every vessel entering the port of New Orleans through the Mississippi River. Vessels free from disease, not in a foul condition, and not from an infected district (which shall be decided upon by the Resident Physician) shall be furnished with a certificate of health, and allowed to proceed to the City. The Resident Physican shall require for every certificate thus furnished, the following fees: Every sailing vessel of one thousand tons or over shall pay thirty dollars ($30); every ship of one thousand tons or less shall pay twenty dollars

($20); every bark shall pay fifteen dollars ($15); every brig shall pay ten dollars ($10); every schooner shall pay seven dollars and fifty cents ($7.50); Every steamboat (towboats excepted) shall pay five dollars ($5); every steamship from Florida, Alabama, Mississippi, or Texas shall pay ten dollars ($10); every steamship from other ports shall pay twenty dollars ($20). The Resident Physician shall return to the Secretary of the Board of Health a weekly list of all vessels inspected by him, as well as all fees collected by him, which shall form a fund for the support of quarantine.

SEC. 3. *Be it further enacted, etc.*, That all vessels in a foul condition, or vessels whose crews or passengers are suffering or have suffered while on the voyage, from contagious, pestilential, or infectious diseases, shall be detained by the Resident Physician at the Quarantine Station, such time, not less than ten days, as may be deemed by him necessary. The Resident Physician shall have power, at his discretion, to grant permits to persons acclimated and healthy, to proceed to the City. He shall have power to compel the captains of vessels to land their sick at quarantine, and to employ such means of purification of the vessels as may be directed by the Board of Health, and require the captain or owners of said vessel to defray the cost of purification. The captain or owners of vessels shall pay five dollars for such sick person landed, nor shall a permit be issued until the payment of the same to the Resident Physician, which money shall be appropriated to hospital expenses.

SEC. 4. *Be it further enacted, etc.*, That, in cases of emergency, the Board of Health shall have power to issue proclamation of quarantine without reference to the Governor, and to enact all needful regulations for the enforcement of the same.

SEC. 5. *Be it further enacted, etc.*, That vessels out ten days from infected ports, presenting clean bills of health, not having nor having had sickness on board, and which are not in foul condition, shall be permitted to pass to the City after thorough fumigation by disinfecting agents, to effect which purpose the Resident Physician shall detain said vessels as long as he may deem necessary. The Resident Physician shall, in all such cases, require evidence, under oath, and he shall, by this act, be

invested with the power to administer oaths whenever he may deem this necessary to attain the objects of quarantine.

SEC. 6. *Be it further enacted, etc.*, That the office of Assistant Marshal as created under the act relative to quarantine, approved March fifteenth, eighteen hundred and fifty-five, be and the same is hereby abolished.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws contrary to the provisions of this act be and the same are hereby repealed.

Approved March 18th, 1858.

ACT No. 14 OF 1870 (Extra Session).

To amend an act entitled "An Act to establish Quarantine for the protection of the State."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the title of an act entitled "An Act to establish quarantine for the protection of the State," approved March fifteenth, eighteen hundred and fifty-five, be amended and re-enacted so as to read as follows: An Act to establish quarantine for the protection of the State; to create a Board of Health, and to define its powers and duties.

SEC. 2. *Be it further enacted, etc.*, That section second of said act be amended and re-enacted so as to read as follows: There shall be a Board of Health composed of nine competent citizens of the State, three to be elected by the Council of New Orleans, on joint ballot, and six to be appointed by the Governor by and with the advice and consent of the Senate. The said members shall be selected with reference to their known zeal in favor of a quarantine system. The members of said board shall be commissioned by the Governor for the term of one year, after having subscribed and filed in the office of the Secretary of State an oath well and truly to enforce and comply with the provisions of said act and this amended act; and in case of neglecting or failing to comply with said required oath within ten days after their appointment or election, their office shall be considered vacant. The said board shall have power to appoint sanitary inspectors, not to exceed six in number, one for each of the four

districts of the City of New Orleans, and one for the City of Jefferson, and one for the portions of the parishes of Orleans and Jefferson situated upon the right bank of the Mississippi river, which said inspectors for the said four districts of the City of New Orleans shall be in place and in lieu of the four health officers now appointed by the Council of New Orleans. The annual salaries of each of said inspectors shall not exceed the sum of two thousand and four hundred dollars, and said salaries shall be paid by the respective cities and parishes for which said inspectors shall be appointed, the parish of Orleans, right bank of the Mississippi river, paying two-thirds, and the parish of Jefferson, right bank, paying one-third of the salary of the inspector appointed for said portions of said parishes. Said inspectors shall be subject to removal at the pleasure of said board.

SEC. 3. *Be it further enacted, etc.*, That section six of said act shall be amended and re-enacted so as to read as follows:

SEC. 6. That the Board of Health shall have power to employ nurses and assistants to attend the sick, and such other persons as may be necessary to carry out proper quarantine regulations, and to fix their compensation; to fix the number of days of quarantine for vessels liable to it under sections ninth and thirteenth of this act, not to be less than ten days; to determine how said quarantine shall be performed, and to make all legal regulations not provided by this act, nor contrary to the same, and necessary to carry out a proper system of quarantine, and to enforce the same by fine not exceeding five hundred dollars; to make rules and regulations for preserving good order and police within the limits of the quarantine ground, and to impose penalties for the breach thereof; to contract for the necessary buildings at the quarantine grounds; to appoint a secretary, who shall act as treasurer, whose salary shall be fifteen hundred dollars a year, and who shall furnish security in the sum of ten thousand dollars. It shall be his duty to keep a minute of the proceedings of the board and all vouchers and expenditures made by authority of said board. The said board shall have the power to remove or cause to be removed any substance, matter or thing which they may deem detrimental to health, whether such substance, matter or thing be in the Cities of New Orleans or Jefferson, or in the parishes of Orleans or Jefferson, on the right bank of the

Mississippi river, and the respective street commissioners of said cities, and police juries of said parishes, shall, without delay, execute the orders of said board with reference to the removal of such substance, matter or thing, and the expenses necessarily incurred in making such removal, as well as those incurred for purposes of disinfection and removal of sick persons, shall be borne, respectively, by said cities, and said portions of said parishes from which such removal or wherein such disinfection shall take place. The said board shall have power to pass and enforce by adequate fine, not in any case to exceed fifty dollars, sanitary ordinances for and within the cities of New Orleans and Jefferson, and the parishes of Orleans and Jefferson, on the right bank of the Mississippi river, and for the purpose of enforcement of said ordinances, as well as of this act and the act entitled, "An Act to establish quarantine for the protection of the State," and the amendments thereto, the said board shall have power to sue in its own name, in any civil court having competent jurisdiction, for any fines or pecuniary liabilities imposed by said ordinances or by said acts or amended acts; and said fines or moneys so recovered shall become a portion of the funds of said board. And should any street commissioner, or street contractor, or any person, contracting or employed to clean the streets, after having been duly notified, neglect or refuse to obey any necessary sanitary order or ordinance of said board coming within the purview of this act, such street commissioner or street contractor, or person contracting or employed to clean the streets, shall be held personally liable, the same as if the matter or thing complained of was by his original fault. The board shall have control of the sanitary police within the aforesaid cities, and the said portions of the aforesaid parishes where such sanitary police is upon duty, which force shall at all times consist of not less than one officer for each of the four districts of the City of New Orleans, one for the City of Jefferson, and one for the parishes of Orleans and Jefferson, on the right bank of the Mississippi river; and, in case of actual or threatened epidemic, said board shall have power to call upon the Board of Metropolitan Police for such additional sanitary police force as said Board of Health shall deem necessary. The Board of Health shall have power to define the duties of officers employed by them and impose addi-

tional duties to officers appointed under this act; to issue warrants to any constable, police officer, or sheriff, in the State; to apprehend and remove such person or persons as cannot otherwise be subjected to the provisions of this act, or who shall have violated the same; and whenever it shall be necessary so to do, to issue their warrant to the sheriff of the city or parish where any vessel may be, having violated the provisions of this act, commanding him to remove said vessel to the quarantine ground, and arrest the officer thereof; all which warrant shall be executed by the officer to whom the same shall be directed, who shall possess the like powers in the execution thereof and be entitled to the same compensation as if the same had been duly issued out of any court of the State.

Approved March 16, 1870.

ACT No. 68 OF 1876.

To authorize and empower the Board of Health of the State of Louisiana to detain and disinfect, and to pass after disinfection, vessels from infected ports, at and from quarantine stations, in lieu of a time of quarantine detention in certain cases, and to repeal conflicting laws.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the Board of Health of the State of Louisiana be and is hereby authorized and empowered, at its discretion, at any time, to cause the detention at Quarantine stations, for purposes of disinfection and purification, and to disinfect, fumigate and purify, any or all vessels from ports in which yellow fever usually prevails, or from ports where other contagious or infectious diseases are reported to exist, and after such disinfection, fumigation and purification at quarantine, to permit the passage to the city of New [Orleans] of such vessel or vessels, without any prescribed time of detention, when it is satisfied that the same have been properly and sufficiently disinfected and purified so that said vessel or vessels may safely be permitted to pass without damage to the public health or risk of contagion.

SEC. 2. *Be it further enacted, etc.*, That all laws or parts of laws conflicting with this act be and the same are, so far as respects

the operation of this act, hereby repealed, and that this act shall take effect from and after its passage.

Approved March 24, 1876.

ACT No. 80 OF 1877 (Extra Session).

To reorganize and render more efficient the Board of Health of the State of Louisiana; to define its powers and prescribe its duties and those of quarantine and other officers under its control; to provide for its expenses, and for the recording of births, deaths, and marriages in the parish of Orleans; and to provide penalties for the enforcement of this Act and for violation of the same, and for the ordinances and orders made in pursuance thereof.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened.* That the Board of Health of the State of Louisiana shall hereafter consist of nine members, four of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and five of whom shall be elected by the Council of the city of New Orleans. They shall hold their office for four years, unless sooner removed for cause. The members first appointed shall be so designated that the term of two of those appointed by the Governor and two of those elected by the Council of New Orleans shall expire in two years from the fifteenth day of March, one thousand eight hundred and seventy-seven, and the term of the two others appointed by the Governor and the three others elected by the Council shall expire in four years from said date. At least one of the members of said board appointed by the Governor and two of the members elected by said Council shall be regularly licensed physicians, resident in New Orleans. And thereupon the Governor shall issue to each of them a commission for his respective term of office. At any meeting of said board five members shall constitute a quorum for the transaction of business.

SEC. 2. *Be it further enacted, etc.*, That the said board shall proceed to organization at its first meeting in the month of April, of each alternate year, by electing one of its own number to be president, and a suitable person to be secretary and treasurer, whose powers and duties shall be those now prescribed by law for said officers, and such other powers and duties as may be herein de-

volved upon them. The president of said board shall receive an annual salary not exceeding the sum of twenty-four hundred dollars, and the secretary and treasurer shall receive an annual salary not exceeding the sum of two thousand dollars, to be paid out of the funds of, or appropriations to, said board. No other member of said board shall receive any pay or compensation whatever.

SEC. 3. *Be it further enacted, etc.*, That said board shall have power and authority to make all needful rules, regulations, and ordinances upon the subject of vaccination within the parish of Orleans; *provided*, that nothing in this Act shall be construed to render vaccination in any case compulsory; the said board shall encourage vaccination, and shall furnish pure and fresh vaccine matter to the district sanitary inspectors and city physicians for the purpose of gratuitous vaccination, and the furnishing of such vaccine matter shall be paid by the said Board of Health.

SEC. 4. *Be it further enacted, etc.*, That the said board shall have power and authority, on the concurrence of the City Council, to provide for, protect, and preserve, by adequate means, the health and salubrity of the city of New Orleans, and, in the exercise of such power and authority, may, with the assent of the City Council, incur such necessary and reasonable expense as occasion may warrant, which expenses shall be paid by the city of New Orleans, after approval of the same by said board, out of the budget appropriation as hereinafter provided; and no expense beyond such budget may or shall be incurred chargeable upon the city of New Orleans. It shall hereafter be the duty of said board to forward to the Mayor and City Council, annually and in time to be included in the budget of expenses of the city of New Orleans, an estimate of the probable sum required to meet the expenses aforesaid for the ensuing year, and other expenses provided for in this Act to be paid by the city of New Orleans; and said estimate shall include the salaries of the sanitary inspectors appointed under existing laws for the different districts of said city, as well as the reasonable expenses of said sanitary inspectors for rent of office and stationery for their official duties, and the said board shall also, at the same time, make to the City Council a detailed statement (verified by the oath of the president and secretary thereof) of all fees, fines, forfeitures, and sums

of money which have been received by the said board during the past year, as well as an estimate of the probable receipts for the ensuing year; and it shall be the duty of the Mayor and Council of the City of New Orleans, after considering such report and estimate, to make such appropriation as may be by them deemed necessary for the expenses of said board, and place it on the annual budget of expenditures. And should the fees, fines, forfeitures, and sums of money which have been received by said board under the provisions of this Act during the year exceed the expenses of said board, the said excess shall be paid to the Administrator of Finance of the City of New Orleans.

SEC. 5. *Be it further enacted, etc.*, That the Board of Health, through its president or other proper officer, shall have power and authority to call upon the police authorities for necessary aid and assistance in enforcing any of the authority or powers conferred upon it by this Act, as well as enforcing any of its orders, rules, and regulations. And it shall be the duty of the police authorities to render to the Board of Health such necessary aid and assistanee, when so called upon, by the use of the police force, as may effectually accomplish the intentions of this Act, and of the orders, regulations, and ordinances of said Board.

SEC. 6. *Be it further enacted, etc.*, That the said board shall, in any civil suit or proceeding in which it may be a party, obtain all writs, appeals, or other process without being compelled to furnish bond.

SEC. 7. *Be it further enacted, etc.*, That the said board shall have power and authority to establish quarantine stations upon any of the approaches to the city of New Orleans, whenever in its discretion such stations may be rendered necessary to protect the health of the city of New Orleans or the State, and to make all needful rules and regulations with reference to the management and police of such stations. It shall regulate the duties and obligations of masters of vessels and other persons there arriving, and any master of a vessel or other person who shall violate any of the rules, ordinances or regulations of said board, made with reference to the management or police of such stations, or to vessels or other means of conveyance or transportation at or arriving at such stations, or shall evade or refuse visitation of the proper health or quarantine officer, or shall refuse to allow

such quarantine officer to inspect, disinfect or fumigate such vessel or other means of conveyance or transportation, shall be liable to said board in a sum not exceeding five hundred dollars for each and every offense, to be recovered by civil suit wherever such offender, vessel, or means of conveyance may be found, and said board shall have lien and privilege for the payment of said liability on such vessel or other means of conveyance or transportation, to be conserved by writ of provisional seizure, in which case bond shall be given in amount to be determined by the judge issuing the writ, and the release bond shall be for an amount not exceeding six hundred dollars. All quarantine physicians and other officers and employes for quarantine stations, both for those now existing or that may be established hereafter, excepting the Mississippi Quarantine Station, shall be appointed and their salaries fixed by said board.

SEC. 8. *Be it further enacted, etc.*. That the president of said board be *ex-officio* recorder of births, deaths and marriages for the parish of Orleans, but shall, as such, be under the general direction and control of said board. All fees collected by him shall be paid into and be a part of the funds of said board. The said board shall prescribe such blanks and forms as it may deem necessary for procuring vital statistics in said parish, and enforce the use of the same; and the president of the said board shall cause to be prepared and shall keep suitable books of record for said office, which shall be carefully preserved in fireproof buildings or vaults.

(Remaining Sections omitted.)

Approved April 20, 1877.

ACT No. 69 OF 1882.

To fix and regulate quarantine charges at the Mississippi River Station, to establish a lien and privilege on vessels inspected, in favor of the Board of Health for the same, and to provide for their enforcement and collection by provisional seizure.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the resident physician at the Quarantine Station on the Mississippi river shall require for every inpection and granting certificate the following fees and charges: For every

ship, thirty dollars ($30); for every bark, twenty dollars ($20); for every brig, ten dollars ($10); for every schooner, seven dollars and a half ($7.50); for every steamboat (towboats excepted), five dollars ($5); for every steamship, thirty dollars ($30).

SEC. 2. *Be it further enacted, etc.*, That the Board of Health shall have an especial lien and privilege on the vessels so inspected for the amount of said fees and charges, and may collect the same, if unpaid, by suit before any court of competent jurisdiction, and in aid thereof shall be entitled to the writ of provisional seizure on said vessels.

SEC. 3. *Be it further enacted, etc.*, That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, and all laws and parts of laws on the same subject matter, not in conflict and inconsistent herewith, are continued in full force and effect.

Approved July 1, 1882.

ship, thirty dollars ($30); for every bark, twenty dollars ($20); for every brig, ten dollars ($10); for every schooner, seven dollars and a half ($7.50); for every steamboat (towboats excepted), five dollars ($5); for every steamship, thirty dollars ($30).

SEC. 2. *Be it further enacted, etc.*, That the Board of Health shall have an especial lien and privilege on the vessels so inspected for the amount of said fees and charges, and may collect the same, if unpaid, by suit before any court of competent jurisdiction, and in aid thereof shall be entitled to the writ of provisional seizure on said vessels.

SEC. 3. *Be it further enacted, etc.*, That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, and all laws and parts of laws on the same subject matter, not in conflict and inconsistent herewith, are continued in full force and effect.

Approved July 1, 1882.

118-455

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U. S. Supreme Court.

MORGAN'S LA. & T. R. R. CO.

VS.

BOARD OF HEALTH OF LOUISIANA.

APPELLEE'S BRIEF.

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U. S. SUPREME COURT.

MORGAN'S LA. & T. R. R. CO.

vs.

BOARD OF HEALTH OF LA.

APPELLEE'S BRIEF.

The contention in this case is as to the constitutionality of the Louisiana Statute of July 1st, 1882, entitled:

"AN ACT,

To fix and regulate quarantine charges at the Mississippi River Station, to establish a lien and privilege on vessels inspected, in favor of the Board of Health for the same, and to provide for their enforcement and collection by provisional seizure.

"SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the resident physician at the quarantine station on the Mississippi River, shall require for every inspection and granting certificate, the following fees and charges:

"For every ship, thirty dollars ($30); for every bark twenty dollars ($20); for every brig, ten dollars ($10); for every schooner, seven dollars and a half ($7.50); for every steamboat (towboats excepted), five dollars ($5); for every steamship, thirty dollars ($30).

"SECTION 2. *Be it further enacted, etc.*, That the Board of Health shall have an especial lien and privilege on the vessels so inspected for the amount of said fees and charges, and may collect the same if unpaid, by suit before any Court of competent jurisdiction, and in aid thereof, shall be entitled to the writ of provisional seizure on said vessels." Act No. 69 of 1882.

I.

The charge is that this Statute violates the provisions of the Federal Constitution: (1) "*Congress shall have power... to regulate commerce with foreign nations, and among the several States, and with the Indian tribes,*" (Art. 1, Sec. 8, par. 3),—and (2) "*No State shall, without the consent of Congress, lay any duty on tonnage.*" (Art. 1, Sec. 10, par. 2.)

It is charged also that the Louisiana Statute contravenes Arts. 30 and 48 of Louisiana Constitution,—in as much as it is alleged to be a local Statute, passed without compliance with the formalities required in such cases,—and that it is an amendment of another Statute, and, as such, does not re-enact and publish at length the amended Statute.

The Louisiana Supreme Court did not consider this last mentioned contention as serious. For after an exhaustive consideration of the questions of commerce and tonnage, it summarily disposes of the other points as follows:

"The claim that the Act contravenes Arts. 48 or 30 of the Constitution of this State, is without foundation."

"The Act is neither *local* nor *special*, but it is of the most general character, intended for the protection and benefit of the entire people of the State."

"Neither does it *revive* or *amend* any prior law. It is an original and independent Statute, repealing such portions of prior laws on the same subject matter, as are unconsistent with it."

This Court has uniformly decided that in the interpretations of State Constitutions it would follow the interpretation of the highest Courts of the State.

II.

The questions presented are:

1. Is the Louisiana Statute a regulation of commerce?
2. Does it impose a tax on tonnage?

Defendants contend that the Louisiana Statute does not purpose to regulate nor regulate commerce, although *incidentally* it deals with objects of commerce; and that it does not levy a tax on tonnage, although a *fee* or *contribu-*

tion for services rendered is exacted of vessels in their transit.

There must be a distinct understanding of the *purpose* and *operation* of the assailed Statute, in order to ascertain whether it was intended as a pure quarantine measure, or whether, in reality, it provides ways and means to raise revenue for the exchequer.

For that purpose let us consider the body of legislation of which the Statute of 1882 is a component part.

III.

The Louisiana Statute of March 15, 1855, No. 336, p. 471, is entitled "AN ACT *to establish Quarantine for the protection of the State.*"

Section 2 of this Act creates the Board of Health.

Under Section 6 the Board of Health has "power to employ nurses and assistants to attend the sick, and such other persons as may be necessary to carry out proper quarantine regulations,"—"to fix *the number of days of quarantine* for vessels liable to it under Sections 9 and 13 of this Act, *not to be less than* 10 *days*";—to determine how said quarantine shall be performed, and to make all legal regulations, not provided by this Act, nor contrary to the same, and necessary to carry out a proper system of quarantine".... "*to contract for the necessary buildings at the Quarantine grounds.*"

Section 8 requires of the resident physician of the Quarantine ground also *to visit* vessels entering the mouth of the Mississippi River, *to charge certain fees for inspection,—and to deliver their certificates of health.* The fees thus collected, as expressly provided, "*shall form a fund for the support of the Quarantine.*"

Section 9 regulates the *detention of* "*vessels, cargoes, crews and passengers,* coming from an infected district, as provided by Section 13, or in a foul condition, or having on board persons affected with cholera, yellow fever, pestilential, contagious or infectious diseases, *during such time as he, (the physician,) may deem necessary,—not less than* 10 *days,*—to

compel the Captain to land the sick at the Quarantine ground,—*to fumigate and cleanse*".... *before delivery of certificate of health.*

Section 13 provides for the issuance of quarantine proclamation "upon the advice of the Board of Health."

The other sections of the law require an inspection and certificate of the Resident Physician before a vessel can land at New Orleans, and make it a misdemeanor, punishable with fine and imprisonment, to proceed to land at New Orleans without such certificate and permit.

On March 15th, 1858, was passed an act, supplementary to the above Act. (No. 269, p. 187.)

Sec. 2 provides: "It shall be the duty of the Resident Physician or his assistant, *to visit and inspect* every vessel entering the port of New Orleans through the Mississippi River. Vessels free from disease, not in a foul condition, and not from an infected district (which shall be decided upon by the Resident Physician), *shall be furnished with a certificate of health, and allowed to proceed to the city.*"

This section provides expressly that the fees collected, "*shall form a fund for the support of quarantine.*

Sec. 3 and 5 regulates the *detention* of vessels, "by the Resident Physician at the Quarantine Station, *such time, not less than ten days, as may be deemed by him necessary.*"

The Act No. 80, of April 20, 1877, Sections 7 and 14, enlarges the powers of the Board of Health with respect to quarantine at the Mississippi Station.

IV.

This legislation exhibits a complete system of quarantine at the Mississippi River Station, to protect the health of the State of Louisiana,—and, for that matter, of the Mississippi Valley. Ships and vessels are to be inspected, cleansed or fumigated according to circumstances, before they are allowed to proceed on their voyage up the Mississippi River. Their detention, under given cases, cannot be less than ten days, but may be more, as may be deemed necessary by the quarantine physicians. They cannot proceed up the river

except with a clean bill of health, an expensive system of quarantine is, as a matter of fact, and of necessity, provided at the quarantine grounds; and as a compensation for inspection services rendered, vessels are charged a fee.

It is a matter of legal necessity, under the Statutes, that all vessels shall be inspected.—Without inspection they cannot get a certificate, and, without the certificate, they cannot proceed on their voyage up the river.

The fees thus collected, constitute *a trust fund* for quarantine purposes, and cannot be diverted to other channels: "*they shall form a fund for the support of quarantine.*"

None of these fees can, *by legal intendment*, find their way to the exchequer, State or City; and, *as a fact*, this trust fund is insufficient for the support of State maritime quarantine proper. These fees are not laid for purposes of revenue, Municipal or State. They are levied expressly and virtually as a contribution for maritime inspection services rendered to the vessels themselves: the Statute denominates them as such; and it is a stretch of fancy to say that this is a mere disguise, or false pretense.

V.

That the Board of Health performs other functions than quarantine duties on the Mississippi River, does not detract from the genuine character of its functions at the quarantine grounds;—nor does it affect the character or nature of the contribution, which is levied there strictly for maritime inspection services.

The Board of Health is a State institution,—a quasi-municipal corporation,—charged with the quarantine government at the Mississippi River,—and besides with the protection of the health of the Parish of Orleans. In the exercise of its functions it is distinct from the City of New Orleans, and subject to no control or supervision on her part, not only as regards State quarantine, but as to its local operations within the limits of New Orleans.

Its revenues are derived from two distinct sources;—one

from quarantine fees and dues, which can be (and are exclusively) expended for strictly maritime inspection service; —and the other, from fees and dues received in the discharge of its local duties within the limits of New Orleans, and devoted to its expenses in that respect. These constitute two distinct funds,—the former, a trust fund for quarantine purposes,—and the latter, a fund for local health purposes. All the expenses of the Board for salaries are paid exclusively out of the latter fund, excepting those of the President and Secretary, which are paid jointly and by halves out of the two funds, as is meet and proper.

As already stated no part of the trust fund for quarantine purposes can be by legal intendment, nor is it in fact diverted into any other channel; but the surplus of the other fund, if any, at the end of the fiscal year, is to be turned over to the City of New Orleans, in order to re-imburse her the advances, which she is by law compelled to make on the requisition of the Board of Health for the payment of local inspectors.

It being, therefore, an ascertained fact that the quarantine fees are charged really as contribution by the vessel for the requisite inspection, without which she could not proceed on her voyage, the discussion of the constitutional questions may now be profitably opened.

REGULATION OF COMMERCE

First—What is a regulation of commerce? or rather what is not a regulation of commerce in the intendment of the articles of the United States Constitution?

Burroughs on Taxation, p. 97, lays down the doctrine, in speaking of inspection laws, thus: "These laws are like quarantine laws or laws regulating roads or ferries, are a part of the mass of legislation not surrendered by the States, and which can be best exercised by the States themselves. The limitation on these inspection laws is, that in the duty or tax imposed, they shall not ex-

tend beyond what may be absolutely necessary for their execution, and that the net produce of all duties or imposts laid by any State or imports and exports shall be for the use of the treasury of the United States."

The United States Supreme Court maintained the same doctrine in the celebrated case of Ogden vs. Gibbons. 9 Wheaton, 1. On p. 574 of the Condensed Reports, the Court said, "Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass. No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation." This dictum was pronounced upon the question of the right of the States to impose fees on inspections, and such other matters, although the point at issue did not directly concern this police power of the State. The present Supreme Court of the United States has recently said of this decision. (2 Otto, 270), that: "It has become the accepted canon of construction of this clause of the Constitution as far as it extends." In the last decision cited, the present Court say, that Congress might, if it pleased, assume jurisdiction of all quarantine matters at all ports, if it were so inclined, and such power would then be exclusive, but that in the absence of Congressionnal action, the Court is not prepared to say that the quarantine power and its necessary regulations does not reside with the States themselves." In a later case, one of the Missouri cattle cases, where the State law prohibited the introduction of Mexican, Texas and Indian Cattle, (5 Otto, 472,) it declared the statute unconstitutional, but said: "While we unhesitatingly admit that a State may pass sanitary laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious deseases or convicts, etc., from entering the State; while for purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into and

through the State, beyond what is absolutely necessary for its self-protection."

7 Howard, 400 and 403. We think that these cases are sufficient without multiplying citations to establish the point that the exercise of quarantine powers, and the collection of reasonable fees therefore, by the State, is sustained by the current of decision, as not being a regulation of commerce within the prohibition of the Constitution. It is but proper to add that although we have nowhere fond any decisions denying the power of the State to collect quarantine fees, that there are a number of decisions in the suits known as the Passenger cases, which deny the right of a State to collect a *per capita* tax on passengers on the ground that it is a burden on commerce. The details in those cases, and the especial clauses of statutes of the various States declared unconstitutional, are so various and the distinctions drawn are so nice that we do not discuss them here.

Second—Do the laws of the State contravene paragraph 6, section 9, article 1 of the Constitution of the United States in laying a duty on articles exported from any State and by giving a preference to ports of one State over those of another?

That the paragraph was not intended to apply to quarantine or inspection laws, is obvious by reference to paragraph 2 of the folowing article, which provides: "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports *except what may be absolutely necessary for executing its inspection laws*, and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress." Speaking of the former clause, Burroughs on Taxation, says, p. 105: "The States may impose taxes to execute their inspection and quarantine laws. The former must be limited to what is absolutely necessary for their execution, and the latter, though generally valid, yet if they appear to be in reality a tax on the transit of

passengers from foreign countries or from State to State are not valid."

In 7 Howard, p. 414, Mr. Associate Justice Wayne, in summing up the opinions of his associates, Justices McLean Catron, McKinley, Grier and himself, says, in discussing this very same paragraph: "That the States of the Union may, in the exercise of their police powers, pass quarantine and health laws, interdicting vessels coming from foreign ports or ports within the United States, from landing passengers and goods, prescribe the places and time for vessels to quarantine, and impose penalties upon persons for violating the same; and that such laws, though affecting commerce, in transit are not regulations of commerce, prescribing terms upon which merchandise and persons shall be admitted into ports of the United States, but precautionary regulations to prevent vessels engaged in commerce from introducing disease into the ports to which they are bound, and that the States may, in the exercise of such police power, without any violation of the power in Congress to regulate commerce, exact from the owner or consignee of a quarantined vessel and from the passengers on board of her, such fees as will pay the State the cost of their detention and of the purification of the vessel, cargo and apparel of the persons on board."

It follows as a necessary corollary, we think, that even where the ship is not detained, and has no sick on board, that an inspection fee can be exacted on the same principle.

Third - Does the State law impose a tonnage tax such as prohibited by paragraph 3, section 10, article 1, which provides: "No State shall, without the consent of Congress, lay any duty on tonnage."

Burroughs on Taxation, p. 89, says: "Congress has prescribed the rules of measurement and computation in ascertaining the tonnage of American ships and vessels. The word tonnage in the light of these regulations means the contents of the vessel expressed in tons of one hundred cubical feet. A tax laid upon vessels graduated by this ton-

nage is a duty of tonnage. It has been claimed that where the owners of the vessel reside in the State, and the tonnage is referred to as a mode to determine and ascertain the tax to be assessed, and to furnish a rule to govern the assessors in the performance of their duties, the provision is not violated, but unsuccessfully in the courts of the United States."

The State of Alabama laid a tax 'on all steamboats, vessels and other water craft plying in the navigable waters of the State, at the rate of one dollar per ton of the registered tonnage thereof, the tax to be assessed at the port where the vessels are registered, if practicable, to be demanded of the person in charge of the vessel, and if not paid, the vessel to be seized and sold.' Cox, a citizen of Alabama, the owner of a steamboat enrolled and licensed for the coasting trade, engaged in the navigation of the Alabama, Bigbee and Mobile rivers, carrying freight and passengers between Mobile and points on those rivers, altogether within the limits of the State, paid the tax under protest, and brought suit to recover it, on the ground that it was a tonnage tax, or duty on tonnage. The Supreme Court of Alabama sustained the tax. The Supreme Court of the United States reversed the decision, and declared it to be a duty of tonnage, and as such, unconstitutional. It sustained the same doctrine in several cases known as the Tonnage cases, of which this was one. 12 Wallace, 204. So where, under a statute of the State of Virginia, a tax for inspection was laid on vessels engaged in the oyster fisheries and an inspection fee of three dollars per ton was imposed, the Supreme Court held it to be a duty on tonnage, and the statute to be in conflict with the Constitution of the United States. (20 Grattan, 419, 422) In the case of Cannon vs. New Orleans, 20 Wallace, 577, in which the validity of an ordinance of the city of New Orleans, imposing a tax of ten per cent per ton "on all steamboats which shall moor or land in any part of the port New of Orleans," was called in question, the United States Supreme Court decided it to be a duty of tonnage, and as such, prohibited by the Constitution of

the United States. Mr. Justice Miller, in delivering the opinion of the Court, said:

"Whatever more general or more limited view may be entertained of the true meaning of this clause, it is perfectly clear that a duty or tax, or burden imposed under the authority of the State which is, by the law imposing it, to be measured by the capacity of the vessel, and is in its essence, a contribution claimed for the privilege of arriving or departing from a port of the United States, is within the prohibition."

This general principle is maintained in numerous other old decisions of the Supreme Courts of the various States, and of the Supreme Court of the United States. We forbear from burdening this brief by citing them, as they only reiterate the same principle. We content ourselves with refering to only one of them, as being directly in point. The case of Peet vs. Morgan, 19 Wallace, 581, discloses the following facts:

"Charles Morgan filed a bill in the Circuit Court enjoining Peet, the health officers of the port of Galveston, from collecting quarantine fees from his steamers, under a law of the State of Texas which provided that every vessel arriving at the quarantine station of any town on the coast of Texas, should pay five dollars for the first 100 tons, and one and a half cents for each additional ton."

The Circuit Court made the injunction perpetual, and Peet appealed to the Supreme Court of the United States.

The question was: "Can a State lay a tonnage tax on vessels owned in foreign ports, and entering her harbors in the pursuit of commerce, in order to defray the expenses of their quarantine regulations?"

Mr. Justice Davis delivered the opinion of the Court. "That the power to establish quarantine laws rests with the States, and has not been surrendered to the General Government, is settled in Gibbons vs. Ogden.

The source of a power is an acknowledged right of a State to provide for the health of its people, and although this power, when set in motion, may, in a greater or less

degree, affect commerce, yet the laws passed in the exercise of this power are not enacted for such an object. They are enacted for the sole purpose of preserving the public health, and if they injuriously affect commerce, Congress, under the power to regulate it, may control them. Of necessity they operate on vessels in commerce, and may produce delay, or inconvenience, but they are still lawful when not opposed to any constitutional provision or any act of Congress on the subject. It is evident that the power to establish quarantine regulations cannot be executed without the State possesses the means to raise a revenue for their enforcement, but it is equally evident that the means used for this purpose must be of such a character as the restrictions imposed by the Federal Constitution upon the taxing powers of the States authorize. We are not called upon in this case to go into the general subject of the limitations imposed by these restrictions, because the tax in question is manifestly outside the jurisdiction of the State to impose, as it is a "duty of tonnage" within the meaning of the Constitution." Had the jurisprudence rested here, it would, perhaps, seem that any quarantine fee, however legal and constitutional in other respects, if levied per ton, or any number or classification of tonnage, would be unconstitutional. But it must be borne in mind that in the Alabama and Virginia cases the tonnage tax was laid as a measure of revenue, and in the Texas case last cited, the law laid the tax on tonnage for quarantine purpose, irrespective of the fact whether any services of inspection, granting of certificates, fumigation or other quarantine duties were performed. So in the Cannon case, 20 Wallace, 577, the ordinance provided for a payment of a tonnage duty, whether use of the wharves was made or not, and was levied on all vessels arriving or landing at any point within the limits of the corporation of the city. The same doctrine is maintained in 6 Wallace, 31, regard to Port in Warden's fees, and also in 12 Wallace, 205.

It will be remembered, in the Texas cases, it was laid down that "it is evident the power to establish quarantine

regulations cannot be executed without the State possesses the means of raising a revenue for their enforcement," but the means employed must be constitutional.

The more recent decisions in analogous cases, show that where services are rendered and duties performed by its officers or those of delegated power from the State, fees regulated on the basis of tonnage are constitutional. In the case of the Packet Company vs. Keokuk, p. 81, 95 U. S., the Supreme Court held that wharfage fee charged at the rate of one dollar on tonnage less than fifty tons, two dollars on more than fifty tons and less than one hundred, and so on, increasing in the ratio of larger tonnage, was constitutional, where the wharfage was actually furnished, and said: "Nothing in these cases justifies the assertion, that either wharfage or port charges are duties on tonnage, merely because they are proportionate to the actual tonnage or cubical capacity of vessel." We have seen that the St. Louis case, the latest, already cited, held the same doctrine. The case of Vicksburg vs. Tobin sustained a similar ordinance charging wharfage dues according to tonnage. It will thus be seen by the latest jurisprudence, that where a State or city charges fees for services or facilities extended by them and rendered to vessels, a tonnage fee can be collected where the State or city has the constitutional right to exact any fee.

So in the recent case of Parkersburg & O. R. R. Trans. Co. vs. City of Parkersburg, Vol. II. U. S. Supreme Court Reports, p. 738, the same Court said: "We think it very clear that the ordinance in question can not be regarded as imposing any other charge than that of wharfage. The fact that the rates charged are graduated by the size or tonnage of the vessel is of no consequence in the sense of the Constitution. This does not make it a duty of tonnage in the sense of the Constitution and the acts of Congress. So we have expressly decided in several cases," citing the cases we have already mentioned. "When the Constitution declares that no State shall, without the consent of Congress, lay any duty on tonnage * * and that

no vessel * * * should be subject to "tonnage tax or duty," etc., they mean by the phrases "duty of tonnage" and "tonnage tax or duty," a charge or duty on a vessel for the privilege of entering a port."

In 95 U. S. 81, before cited, the United States Supreme Court reviews its previous decisions and says: "In Cannon vs. New Orleans, the ordinance was held invalid, not because the charge was for wharfage, nor even because it was proportioned to the tonnage of vessels, but because the charge was not for wharfage or any service rendered. It was for stopping in the harbor, though no wharf was used. Such also was Northwestern Packet Company vs. St. Paul, 3 Dill., 454. So in Steamship Company vs. Port Wardens, 6. Wall., 31, the statute held void imposed a tax upon every ship entering the port. This was held to be alike a regulation of commerce and a duty of tonnage. It was a sovereign exaction, not a charge for compensation. Of the same character was the tax, held prohibited in Peet vs Morgan, 19 ib. 581."

The question in this case thus narrows itself down to

Fourth — Are the fees exacted under the Louisiana Statute in question a tax or a "compensation" for services rendered? Our opponents seem to regard them as unjust, unparalleled, and as in no wise benefitting the parties paying them, and to be simply an unwarranted tax on commerce. That they are not unprecedented, is shown by the admission in the Record that similar charges have been levied and collected. Since Colonial times, and in nearly all the States, laws similar in their provisions existed in most of those Commonwealths at the time of the adoption of the Federal Constitution. They exist to-day, in nearly every civilized community on the globe. As the result of the assemblage of the International Health Congress held at Paris, the great powers of France, Sardinia, Portugal, Turkey and Toscany, in their "International Convention." (Baker on Quarantine, p. 343 *et seq.*) of 1854, provided as the first two essentials for the maintenance of a proper quarantine:

1. "That all the ships arriving in a port shall pay, without distinction of flag, certain dues for similar purposes, in proportion to their tonnage.

2. "That ships subject to quarantine shall pay besides daily dues for their berths."

Similar laws have been adopted in nearly every other commercial nation of the world.

We have been thus particular in alluding to the colonial laws and statutes of commercial nations, because, as we shall see, the U. S. Supreme Court has laid great stress upon the fact of their existence in similar cases.

In 12 Howard, 312, they say, in considering the pilotage laws of Pennsylvania:

"Testing it by the practice of commercial States and countries, legislating on this subject, we find that it has usually been deemed necessary to make similar provisions.',

In 13 Wallace, 241, the same Court said: "The Constitution took effect on the first Wednesday of March, 1789. Pilot laws existed in several of the States at that time, and were subsequently enacted in others. In all such States it is believed they have been charged from time to time, according to the will of their respective Legislature. Suits in the State Courts have been enforced upon them and recoveries had, and many such cases are reported. In none of them have we found that the question was raised or a doubt expressed as to the validity of the laws or the authority of the States to enact them."

In the same decision just before what we have cited, the Court said, after tracing the history of the pilotage laws in all countries, and in the several States of the Union, "But conceding that this provision is a regulation of commerce and within the power of Congress upon that subject, it by no means follows that it involves the constitutional conflict insisted upon by the counsel of the petitioner.

In the complex system of polity which prevails in this country, the powers of government may be divided into four classes:

Those which belong exclusively to the States.

Those which belong exclusively to the National Government.

Those which may be exercised concurrently and independently by both.

Those which may be exercised by the States, but only until Congress shall see fit to act upon the subject. The authority of the State then retires and lies in abeyance until the occasion for its exercise shall recur.

The commercial power lodged by the Constitution in Congress is in part of this character. Some of the rules presented in the exercise of that power must, from the nature of things, be uniform throughout the country. To that extent the power itself must necessarily be exclusive; as much so as if it had been so declared to be, by the organic law, in express terms. Others may well vary with the varying circumstances of different localities. In the latter contingency the States may prescribe the rules to be observed until Congress shall supercede them; the Constitution and laws of the United States in such case, as in all others to which they apply, being the supreme law of the land. This subject, in some of its aspects, was fully considered in *Gilman vs. Philadelphia.*

Congress so far from exercising the power of regulating the quarantine at the various ports, has uniformly in all of its legislation on the subject, recognized the State quarantine laws and has ordered its officers to assist and aid in their execution, from General Washington's administration down to the national quarantine act. Can it not, in view of these historical facts, be said in regard to the quarantine law as the United States Supreme Court said in 13 Wallace p. 242, in regard to the pilotage laws:

"This early and long continued practical construction of the Constitution by both national and State authorities, as affecting the validity of the statutory provisions here in question, if a doubt could otherwise exist upon the subject, would be entitled to the gravest consideration."

102, U. S. 575.

Contemporary Exposition practiced for years fixes construction of laws and Constitution. 1 Cranch, 299.

In construing the Constitution we must look to the history of the times to ascertain the old law, the mischief and the remedy. 12 Pet. 657.

The Constitution must be construed to carry out its true meaning as understood when adopted. 19 Howard, 393.

Perhaps no stronger illustration of the intent of the framers of the Constitution on this subject can be found than in the views expressed on the floor of Congress in the fourth Congress, only seven years after the adoption of the Constitution, which may be said to be almost contemporaneous with its framing and adoption. We append a copy of the history of quarantine and the bill and debate, as reported in the annals of Congress.

The history of the States shows that in the organization of the Federal Government in 1789 several of the sea-board States had quarantine laws and regulations, adopted by our colonial governments, and which had been in effect for more than a century.

South Carolina enacted a quarantine law as early as 1698, Pennsylvania in 1699, Rhode Island in 1711, New-Hampshire in 1714, New York in 1758. Yellow fever had several times been epidemic in sea-board towns, having commerce with the West Indies, as at Boston in 1693, Philadelphia in 1699, 1741, 1747, 1762, New York 1702, 1793, Charleston 1699.

But it did not attract general attention nor excite great public alarm until the full establishment of commerce with the West Indies, after the revolutionary war.

Yellow fever broke out in New York in 1791 and in Philadelphia in 1793, and in both places it was attributed to shipping from the West Indies.

In the latter year the pestilence excited public alarm, especially in neighboring States having personal and commercial intercourse with Philadelphia. New York, Charlestown, Baltimore and Annapolis took active measures

and finally established rigid land quarantine against Philadelphia.

At the close of the last century, when yellow fever became widely epidemic, the disease was regarded as contagious and infectious, and precautionary measures of the most rigid character were devised to prevent the contact of the sick with the well. Maritime and land quarantines were established, and the latter were enforced with the trusty shot-gun, as in the recent epidemic of 1878.

All the scenes of abject fear and cowardice of 1878 had their counterpart in 1793. City quarantined against city, and State against State, and travelers were subjected to the most rude and brutal indignities.

In December, 1795, the fourth Congress met at Philadelphia at the close of one of the most alarming and widespread epidemics of yellow fever which, up to that time, had ever been known.

The conflicting acts of different State and municipal authorities, in the adoption and enforcement of measures for preventing the importation and spread of yellow fever, had excited much comment; the fever was believed to be imported, and existing quarantines were regarded as inefficient, owing to a want of power on the part of the States to enforce these regulations.

Two questions were raised in Congress:

1st. Should not the establishment and management of quarantine be exclusively the duty of the general government, under the provision of the Constitution empowering Congress "to regulate commerce?"

2nd. Is not quarantine a police regulation of the State or municipality, and hence outside of the provisions of the constitution?

From the annals of the Congress of the United States it appears that on the 28th of April, 1796, Hon. Samuel Smith, of Maryland, proposed a resolution to the following effect, which was referred to the committee of commerce and manufactures to report thereon.

"*Resolved*, That the President of the United States be

authorized to direct such quarantine to be performed on all vessels from foreign countries arriving at the ports of the United States as he shall judge necessary."

This measure, proposed by the Honorable representative from Maryland, was to place the quarantine under the direction of the President, who at that time was General George Washington.

The Committee of Commerce and Manufactures consisted of the following members:

Goodhue of Massachusetts,
Bourne of Rhode Island,
Livingston of New York,
Swarbrick of Pennsylvania.
Smith of Maryland,
Parker of Virginia,
Smith of South Carolina,

May 7th, 1797, the committee reported a bill to regulate quarantine, which was read twice and referred to the committee of the whole.

It was as follows:

"*Be it enacted, etc*, That the President of the United States, be, and is hereby authorized to direct at what place or station, in the vicinity of the respective ports of entry within the United States, and for which duration and particular periods of time, vessels arriving from foreign ports and places they be directed to perform quarantine."

"*Be it enacted, etc*, That the President of the United States, be, and is hereby, authorized to direct the revenue officers, and the officers commanding ports, and revenue cutters, to aid in the execution of quarantine, and also the execution of these Health laws of the States respectively, in such manner as may to him appear necessary."

On May 11th, 1796, on motion of Mr. S. Smith, of Maryland, the House resolved itself into a Committee of the Whole on the bill regulating quarantine.

Mr. Heister, of Pennsylvania, objected to the principle of the bill, as it proposed to take power from individual States to regulate what respected the health of their citi-

zens, and to place it in the President of the United States. He thought the invasion would be attended with very great inconvenience. Many States lay far distant from the seat of government, and before information could be given to the President of the apprehension of any pestilence being introduced and his answer received, the disease might be introduced into the country and great havoc made among the citizens. It appeared to him that the government of each individual State was better calculated to regulate quarantine than the general government; because upon the spot. And if the power was to be transferred from the President to the Collectors at each port (that he conceived must be the case) it would put a vast deal too much power in their hands.

Mr. Smith, of Maryland, said that each individual State might have its own health laws, but the performance of quarantine was in the direction of the general government. The President of the United States ought to be empowered to designate the place where vessels should perform quarantine, to enforce the performance, or to determine at what time of the year it should commence and end. He denied that there was any authority in the State governments to regulate quarantine. They could not command the officer of a port to use force to prevent a vessel entering their ports; the authority over him was in the general government.

Mr. Kitters, of Pennsylvania, understood that each independent State had a right to legislate on this subject for itself; he believed that each State understood its own concerns better than the general government, and therefore the regulation might safely be left with them.

Mr. Milledge, of Georgia, opposed the bill. He said that the State from which he came was in the habit of regulating, and that it would be attended with many inconveniences, if the power was to be placed in the general government.

Mr. Giles, of Virginia, said that self-preservation justified every State in taking means to prevent the introduc-

tion of diseases among the citizens, and he thought the bill unnecessary.

Mr. Smith, of South Carolina, said the Constitution did not give to the State governments the power of stopping vessels from coming into their ports.

May 12th, 1796, Mr. Heister, of Pennsylvania, moved to strike out the first section. It appeared to him as if it would be taking the power of regulating quarantine from any State government and placing it in the hands of the collectors of the different ports; and as he believed the collectors were interested in proportion to the quantity of goods imported, the health of our citizens and the interest of the collectors would be placed in opposition to each other.

Mr. Swarbrick, of Pennsylvania, said, if the section was stricken out, the bill would have every desirable effect. All that was complained of was that the authority of any individual State could not compel vessels to perform quarantine; but if the President gave directions to the officers of the United States at every port to aid the State government in this respect, every effect would be obtained. The first section of the bill was only to direct the time during which quarantine should be performed, and at what particular place, which would certainly be best determined by the State government. Indeed most of them having already fixed the places for the purpose and erected suitable buildings for the sick, for purifying goods, etc., it would be attended with very great inconveniences, if a different place were to be fixed upon by the United States. It was said that the right of regulating quarantine did not reside in the State government; he believed it did, and that the individual States had conceived so, was evident from the expense which some of them had been at in erecting buildings, etc., for the purpose. He particularly alluded to the provisions made for this purpose by Pennsylvania, on the Delaware.

Mr. Bourne, of Rhode Island, opposed the motion; and Mr. Sitgreaves, of Pennsylvania, in like manner, held that

the strongest and best reason for a law such as the one proposed, is that it is matter of very serious doubt whether upon this subject the States had any authority at all, and whether all such power is not vested by the Constitution in the Congress, under their general authority to regulate commerce and navigation.

Mr. Milledge, of Georgia, favored the striking out of the first section, and advocated the view that the power of regulating quarantine rested with the State government.

Savannah, in Georgia, he said, was one thousand miles from the seat of government, and from their situation in respect to the West Indies, they were very subject to the evil of vessels coming in from thence with diseases; and if they were to wait until information could be given to the President, of their wish to have quarantine performed, and an answer received, the greatest ravages might in the meantime take place from pestilential diseases. The State of Georgia had a long law on the subject, had always been in the habit of regulating quarantine, without consulting the general government. * * * *

Mr. W. Lyman, of Massachusetts, thought the individual States had the sole control over the regulation of quarantine. It was, by all means, a regulation which respected the health of our fellow-citizens.

In the town of Boston the small pox was considered as a pestilential disease, and they certainly had a right to make their regulations accordingly. He knew the United States could prohibit the importation of goods, but he did not think it was in the power of the United States to prevent the landing of persons. He believed the bill was unnecessary; that individual States had a right to make such regulations as were necessary for the preservation of the health of their citizens. * * * *

Mr. Gallatin, of Pennsylvania,, said he did not agree in the least with the gentleman from Maryland (Mr. Smith,) that the form of regulating quarantine was exclusively in the United States. He conceived the only clause in the Constitution which could at all countenance such an idea,

was the article relative to commerce, but he said, the regulation of commerce had nothing to do with quarantine. It was a regulation of internal police It was to preserve the health of a certain place, by preventing the introduction of pestilential diseases, by preventing persons coming from countries where they become prevalent, whether such person come by land or by water, whether for commerce or for pleasure, was of no importance—they were all matters of police. No individual States had thought themselves competent to prevent the introduction of slaves coming by sea, although that also might be called a commercial regulation, which they had no right to interfere with. And if a vessel belonging to the gentleman from Maryland was to come to the ports of Baltimore or Philadelphia, with a cargo of negroes, he believed that the government of either place would be equal to the preventing of him from landing and disposing of them, although he would say it was an article of commerce. The State governments had also something to do with the internal regulations of their ports. That of Philadelphia was under the direction of wardens and of State laws. He had no objection to the United States assisting the individual States, in enforcing their quarantine regulations, but he had an objection to their asserting that they had the sole right of making regulations on that head, or of making health laws for the individual States. He knew that when the legislatures of the different States had legislated on the subject, they had thought it an important branch of their duty. * * *

Mr. W. Lyman, of Massachusetts, observed that the gentleman from Maryland (Mr. Smith,) did not make the proper distinction.

Quarantine was not a commercial regulation! It was a regulation for the preservation of health. If commerce was incidentally affected, it ought so to be, when the object was the preservation of health and life. The United States, it was true, could prevent the importation of any goods, whether infected or not, but it did not thence follow that

they could permit the landing of infectious goods contrary to the law of any State.

The several States possessed the sole power over this subject.

They were the best judges of and due exercise of its right to preserve health and life was inalienable. The bill was not only unnecessary and improper, but it was injudicious interference with the internal policy of the States; neither could the amendment which had been offered by the gentleman from Connecticut (Mr. Hillhouse,) ameliorate the bill; it would be interfering with State policy. If that gentleman had any panics about infectious diseases, he might find relief in the laws of the State. If the laws there were not competent thereto at present, the gentleman might remonstrate to their Legislature, and no doubt could exist, but he would be suitably listened to.

As to the argument that States neglected to make regulations, it proved that they supposed them superfluous. Whilst they forbear to do anything, it was proof that nothing ought to be done.

The States are the best judges, and had the sole power to determine.

Mr. Giles, of Virginia, said he did not know which State had legislated on this subject, and which had not. He did not know that any of the States has not legislated upon it; but if they had not done it, they could do it. The gentleman from Maryland (Mr. Smith) had said, to regulate quarantine was a commercial regulation. They were legislating not upon commerce, but upon preventing the introduction of pestilential diseases. Were these objects of commerce? If a State stops a ship, she does not stop it on account of the goods it contains, but because it contains an infectious disorder, which if it were considered as an article of commerce, certainly might, at least, be a contraband article. * * * * * * * * * *

Mr. Swarbrick, of Pensylvania, said: Commercial regulations were placed in the General Government, to prevent one State having advantages over another in respect to

commerce; but with respect to health, every State was certainly the best judge, and the claim was imperious; and if they were under the power of the General Government, and Government was to neglect to take the necessary measures, the State would itself take them. * * * *

The governments of New York and Pennsylvania were in the constant habit of preventing ships from entering their ports until they had been examined with respect to their healthfulness.

The State of Pennsylvania had been at great expense in erecting necessary buildings for the receptions of persons and goods infected with disease. It was to be lamented that gentlemen had not before found out that this was the business of the General Government, for it had been a very expensive undertaking for the State of Pennsylvania to provide the necessary buildings for carrying their quarantine and health laws into execution, and they would gladly have turned it over to the United States.

He thought the utility of the business remaining in the State Government was evident. * * * It was certainly of first consequence to guard the health of their citizens by every possible means. He said at this port they had laws respecting wardens, there was also in two different States inspection laws, which in some degree affected commerce, but were not the kind of regulations prohibited by the Constitution; these did not interfere with the rights of commerce to regulate commerce.

Mr. Holland, of North Carolina, said that in an inquiry into the subject whether the General Government or State Legislatures were the best judges of the measures necessary to be taken for the preservation of the health of the several States, it would occur that the extent of the country being so great, it would be difficult to say what regulations could be best suited to all the parts of the Union, for what would be salutary and proper for one, might be improper for another. From this circumstance it would seem that each State should have the power to pass its own laws on this head, and, if so, the first clause should be struck out; to

preserve one's health was an article of self-defense Every individual should have his own measures to preserve his own health, and each State should judge of the best way of doing it for its own districts. The constitution being silent in respect to health laws, he supposed the naming of them was left to the States themselves. Those who yet have no laws on this subject will make them when necessary. The question, in his opinion, was by no means a commercial one. The gentleman from Maryland, being a commercial man, may be excused from considering it as one, as he readily connects most things with a commercial view.

Mr. Brent, of Virginia, was in favor of striking out the first clause of this bill under consideration, not from any jealousy of that executive, but because the constitution did not authorize such an interference.

If the doctrines of the gentleman from Maryland were true, they would swallow up all the authority of the State Governments.

They had suggested that if the State Legislatures had the power they might use it so as to injure the General Government. He would ask whether this would prove that they did not possess the power? If they possessed the power and exercised it so as to injure the interests of the United States, the Constitution of the Union, he believed would point out a remedy. The gentleman from South Carolina had said that if the State Governments were possessed of this power they might impair the revenue of the United States, and that, therefore, being connected with commerce, the regulating of quarantine must be in the power of the General Government. He would ask whether the different States had not the power of regulating the inoculation for the small-pox? yet this might be so ordered as to affect the trade and commerce of this country and yet no one would say that they had not the power of doing this.

If the construction now contended for was carried to its extent, they would be no bounds to it.

The States had always been considered as possessing the power of regulating quarantine. Such was the opinion at

the time of the adoption of the Constitution, and under that impression the States had passed laws on the subject; nor did he believe that necessity, expediency, or policy required that the power should be changed. If this was the case, the question could only be brought forward for the purpose of establishing a constitutional principle, and which he should certainly oppose.

The question for striking out the first section was put and carried, 46 to 23; and the bill was ordered to be engrossed for a third reading.

Friday, May 23d, 1796, the bill relative to quarantine was read a third time and passed.

In the Senate, Tuesday, May 21st, 1796, Mr. Rutherford, of New Jersey, from the committee to whom was referred the bill sent from the House of Representatives, for concurrence, entitled "An Act relative to quarantine," reported that the bill be amended by inserting, after the word "that," "until general regulations relative to quarantine are made by law." And on the question to agree to the reports it was determined in the negative.

Wednesday, May 28th, the bill was read a third time and passed. Approved, May 27th, 1796.

It will thus be seen from the preceding record of the debate on Quarantine in 1796, the members of Congress who took part in the first discussion after the formation of the Federal Union, concerning the relations of the General and State Governments on the establishment and administration of maritime quarantine, arrived at the following results:

(a.) Quarantine regulations relative to the preservation of the health and lives of the people, and one based upon the evident and inalienable rights of *Self Preservation*. The duty of each State to protect its citizens from the importation of foreign pestilence was clear and imperative.

(b.) The power to establish and enforce quarantine regulations had been exercised by the individual Colonies, and had never been surrendered to the General Government.

(c.) The establishment and enforcement of quarantine

by the individual States, was not a *Regulation of Commerce*, in *violation* of the provisions of the Federal Constitution; but it was simply the exercise of those police powers by the individual States, which were inalienable, and which had not and could not be surrendered to the General Government.

(d.) The representatives who had themselves been active in the securement of the independence of the United States, and who were familiar with the exalted patriotism and great services of General George Washington were not willing to place the right of quarantine in the hands of the General Government and invest the first President of the United States, "with authority to direct at what place or station in the vicinity of the respective ports of entry within the United States, and for what duration and particular periods of time vessels arriving from foreign ports and places may be directed to perform quarantine."

(f.) The outcome of the entire discussion conducted by Smith, of Maryland; Goodhue, of Massachusetts; Bourne, of Rhode Island; Livingston, of New York; Swarbrick, of Pennsylvania; Parker, of Virginia; Smith, of South Carolina; Heister, of Pennsylvania; Kittern, of Pennsylvania; Milledge, of Georgia; Giles, of Virginia; Mr. Litgreans, of Pennsylvania; Williams, of New York; W. Lyman, of Massachusetts; Hillhouse, of Connecticut; Gallatin, of Pennsylvania; Mr. Page, of Virginia; Holland, of North Carolina; Brent, of Virginia; was to affirm the right of the individual States to establish quarantine, and to direct the President of the United States to sustain and protect them in the exercise of said rights.

This is clearly set forth in that portion of the original bill reported by the committees, which was passed by the House of Representatives and Senate, and approved May 27th, 1796.

"*Be it enacted*, etc., That the President of the United States be, and is hereby, authorized to direct the revenue officers and the officers commanding ports and revenue cutters, to aid in the execution of quarantine, and also the

execution of the health laws of the States respectively, in such manner as may appear to him necessary."

On the 21st of December, 1790, a committee composed of Messrs. Lawrence, of New York; Leney, of Maryland; Fitzsimmons, of Pennsylvania; Vinery, of Delaware; and Goodhue, of Massachusetts, was appointed to bring in a bill to establish Health officers in the principal ports of the Union: this committee did not make a report, and the true nature or intention of the motion appears to have been suggested by the petition of the Merchants and other inhabitants of Baltimore, presented on the 16th of December, 1790; "praying that a health officer may be established, or other provision made by law, for protecting them from infectious or epidemical diseases brought by passengers and others arriving from foreign countries?"

Congress, on the 9th of June, 1799, approved the Act of the Legislature of Maryland, levying a duty on vessels to pay the expenses of its Health officer and quarantine establishment.

The action of Congress in regard to the Port of Baltimore, is as follows:

An Act declaring the consent of Congress to an Act of the State of Maryland, was passed December 28th, 1793, and approved June 9th, 1794.

Be it enacted, etc., That the consent of Congress be, and is hereby, granted and declared to the operation of an Act of the General Assembly, of Maryland, passed the 28th of December, one thousand seven hundred and ninety-three, entitled "An Act to appoint a Health officer for the Port of Baltimore, in Baltimore county," so far as to enable the State to collect a duty of one cent per ton, on all vessels coming into the District of Baltimore from a foreign voyage, for the purpose of the said Act intended.

SEC. 2. *And be it further enacted*, That this Act shall continue in force to the end of the next session of Congress, and no longer.

This Act was subsequently repealed.

Notwithstanding that yellow fever again prevailed widely

during the summer of 1796 and 1797, and increased the public alarm by the extension of its area and the fatality of its attacks; and notwithstanding that during the summer of 1798, yellow fever again appeared and attained the proportions of a natural scourge, prevailing in Portsmouth, N. H., Boston and Salem, Mass.; Westerly, R. I.; Hartford, Stonington, New London, Norwalk, Conn.; New York; Bridgeton, and Woodbury, N. J.; Philadelphia, Marcus Hook, and Chester, Pa.; Wilmington, Christina, Duck Creek, and Newcastle, Del.; Baltimore, Md.; Norfolk, Petersburg, and City Point, Va.; Charleston, S. C.: Nevertheless Congress, reaffirmed the rights of the States to establish and maintain local quarantines.

President John Adam in his address to the two houses at the opening of the third session of the 5th Congress, December 8th, 1798, thus refers to yellow fever, and the measures for its exclusion:

"But when we reflect that this fatal disorder has within a few years made repeated ravages in some of our principal sea-ports, and with increased malignity, and when we consider the magnitude of the evils arising from the interruption of public and private business, whereby the national interests are deeply affected, I think it my duty to invite the legislation of this union to examine the expediency of establishing suitable regulations in aid of the health laws of the respective States; for, there being formed on the idea that contagious sickness, was so communicated through the channels of commerce, there seems to be a necessity that, congress, who alone can regulate trade, should frame a system which, while it may tend to preserve the general health, may be compatible with the interests of commerce and the safety of the revenue..

On Wednesday, January 23, 1799, Mr. Smith, of Maryland, chairman of the committee on commerce, reported a bill respecting quarantine and health laws, which was read and committeed.

On Monday, January 28, 1799, on motion of Mr. Smith, of Maryland, the house went into a committee of the whole,

on the bill respecting quarantine and health laws; Mr. Rutledge in the chair.

The bill was read as follows:

SEC. 1. *Be it enacted etc.*, That the quarantine and other restraints which should be required and established by the health laws of any State, or pursuant thereto, respecting any vessel arriving in, or bound to any port, or districts, thereof whether from a foreign port or place, or from another district of the United States, shall be duly observed by the collectors, and all other officers of revenue of the United States, appointed and employed for the several collection districts of such States respectively, and by the masters and crews of the several revenue cutters, and by the military officers who shall command in any port or station upon the sea-coast; and all such officers of the United States shall be, and they are hereby authorized and required faithfully to aid in the execution of such quarantine and health laws according to their respective powers and precincts, and as they shall be directed from time to time by the secretary of the treasury. And the said secretary shall be, and is hereby authorized, when a conformity to such quarantine and health laws shall require it, and in respect to vessels which shall be subjected thereto, to prolong the terms limited for the entry of the same, and the report and entry of their cargoes, and to vary or dispense with any other regulations applicable to such reports or entries; *Provided*, that nothing herein shall enable any State to collect duty or tonnage or imposts without the consent of the Congress of the United States; and provided that no parts of the cargo of any vessel shall, in any case, be taken out or unloaded therefrom otherwise than as by law is allowed, or according to regulations herein fter established.

"SEC. 2. *And be it further enacted*, That when, by the health laws of any State, or by the regulations which shall be made pursuant thereto, any vessel arriving within a collection district of such State shall be prohibited from coming to the port of entry or delivery by law, established

for such district, and it shall be required by such health laws that the cargo of such vessel shall, or may be, unladen at some other place within or near to such district; the collector authorized therein, after due report to him of the whole of such cargo, may grant his special warrant or permit for the unloading and discharge thereof, under the care of the surveyor, or of one or more inspectors, at some other place where such health laws shall permit, and upon the conditions and restrictions which shall be directed by the secretary of the treasury, or such collector may, for the time, reasonably judge expedient for the securing of the public revenue; *provided*, that in every such case all of the articles of the cargo so to be unladen shall be deposited, at the risk of the parties concerned therein, in such public or other warehouses or enclosures as the collector shall designate, there to remain under the joint custody of such collector or of the owner or owners, or master or other person having charge of such vessel, until the same shall be entirely unladen or discharged, and until the goods, wares and merchandise, which shall be so deposited may be safely removed, without contravening such health laws; and when such removal may be allowed, the collector having charge of such goods, wares or merchandise may grant permits to the respective owners or consignees, their factors or agents to receive all goods, wares or merchandise which shall be entered and whereof the duties accruing shall be paid or secured according to law, upon the payment by them of a reasonable rate of storage, which shall be fixed by the secretary of the treasury, for all public warehouses and inclosures."

"SEC. 3. *And be it further enacted*, That there shall be purchased or erected under the orders and with the approbation of the United States, suitable warehouses, with wharves and enclosures where goods and merchandise may be so unladen and deposited, from any vessel which shall be subject to a quarantine or other restraint, pursuant to the health laws of any State as aforesaid, at such convenient place or places therein as the safety of the public revenue

and the observance of such health laws may require; *provided*, that the sites of all such warehouses and wharves, with such other adjoining lands as may be necessary for the public uses hereby authorized, shall be ceded to the United States by the State wherein the same may be."

"SEC. 4. *And be it further enacted*, That where, by prevalence of any contagious or epidemical disease in or near the place by law established as the port of entry for any collection district, it shall become dangerous or inconvenient for the collector and other officers of the revenue employed therein to continue the discharge of their respective offices at such port, the secretary, or in his absence, the comptroller of the treasury of the United States, may direct and authorize the removal of the collector and the other officers employed in his department from such port to any other more convenient place within or as near as may be to such collection district, where such collector and officers may exercise the same authorities and shall be liable to the same duties, according to existing circumstances as in such lawful port or district; and of such removal public notice shall be given as soon as may be.

On motion of Mr. Levall, of Massachusetts, the following section was added, repealing a law of the first session of the Fourth Congress respecting quarantine:

"SEC. 5. *And be it further enacted*, That the act entitled an 'Act relative to quarantine,' passed in the first session of the Fourth Congress of the United States, shall be and the same is hereby repealed."

January 29th, 1799, the bill was read a third time and passed.

In the Senate an additional section was added, permitting the Chief Justice or the Senior Associate Justices to adjourn the Supreme Court in the case of the prevalence of a contagious sickness in the District of Columbia. Similar power was conferred upon the judges of the district and circuit courts.

This amendment was concurred in by the House, and the bill as amended was passed.

The bill was approved February 25th, 1799.

From the preceding facts and records from the journal of Congress it is evident:

1st. After the adoption of the Constitution, Congress held that the individual States had not divested themselves of the power to establish and enforce their own health, quarantine and police laws and regulations.

2d. The acts of Congress passed in 1786 and 1799 not only recognized the power of the individual States to make their own health and quarantine laws, but they commanded the civil and military officers of the General Government to conform to *and assist in the execution* of the health and quarantine laws of each and every State.

3rd. The men who were participating in the struggle for colonial independence, and who framed the Constitution of the United States.

A reference to the quarantine laws of the Colonies and States, as they existed at the time of the adoption of the Constitution and at the time of this debate, will show that they contained the power to exact fees for inspection, disinfection, etc. As these statutes are difficult of access, we, for the convenience of the Court, include here extracts from them, even at the risk of overburdening this brief.

Statutes of S. C., approved April 7th, 1759, Act No. 881, section 5, page 80, volume 4:

V. *And be it further enacted by the authority aforesaid*, That no ship or other vessel which shall come into the port of Charlestown aforesaid from any port or place at which the commander of Forth Johnson, for the time being, shall have received credible information that there is then raging the plague or any malignant fever, small-pox, or other contagious distemper, shall be permitted to pass by the said fort until some one of the physicians hereinafter named, that is to say, Dr. John Moultrie, Dr. David Oliphant, Dr. Alexander Gordon, Dr. George Mulligan, Dr. Lionel Chalmers, Dr. Samuel Carul, Dr. John Murray, Dr. William

Murray or Dr. John Clelland, shall have visited such ship or vessel, and also certified to the commander of the said Fort Johnson that all the sailors, passengers, negroes or slaves (if any) and other people on board such ship or vessel are free and clear from any contagious or infectious distemper, and the owner or owners or master or commander of every such ship or vessel shall and is or are hereby obliged and required to pay such physician a fee of seven pounds, ten shillings, current money; and moreover, the expense of the boat and hands to carry down such physician to visit the said ship or vessel and to bring him up again to Charlestown. Nor shall any ship or vessel, under the like circumstances, be permitted to enter any port or harbor of this Province till some physician or person of experience, to be deputed by the persons appointed as aforesaid respectively, where no physician can be had, shall have visited the said ship or vessel, and certified to such persons as aforesaid respectively that, to the best of their judgment and belief, such ship or vessel and the crew, passengers negroes or slaves are free and clear from any contagious or infectious distemper, for which he shall receive a fee of seven pounds, ten shillings, current money, together with his expenses of going on board and returning, to be paid in the manner aforesaid.

Statutes of S. C., Act 752, approved June 13th, 1747, section 5, page 691, volume 3:

V. *And be it further enacted by the authority aforesaid*, That no vessel which shall come from any part of America, where the commander of Fort Johnson, having received information of any plague, malignant fever, small-pox or any other contagious distemper may be, or the master or mate of the said vessel refusing to take the oath tendered to him by the said commander of the said port, shall be permitted to pass by Fort Johnson till some one of the physicians hereinafter mentioned, that is to say, Dr. John Lining, Dr. Thomas Dale, Dr. John Moultrie, Dr. John Martini, Dr. David Caw or Dr. William Rind, shall have visited such vessel and certified to the commander of Fort

Johnson that all persons on board the said vessel are in health, and the physician for visiting every such vessel as aforesaid shall be paid a fee of seven pounds, ten shillings current money, by the owners or masters of such vessel, who shall also pay for the expense of the boat to carry such physician down.

Statutes of S. C., volume 3, page 773, section 1, Act No. 720, approved May 29th, 1744:

I. *And be it enacted*, by his Excellency, James Glen, Esq, Governer in Chief and Captain General in and over his Majesty's Province of South Carolina, by and with the advice of his Majesty's Honorable Council and the Assembly of this Province, and by the authority of the same, That no ship or vessel which, after the fifth day of July next after the passage of this act, shall arrive or come into this Province over the bar of the harbor of Charlestown, with negroes from the coast of Africa or elsewhere, shall be permitted, upon any pretense whatever, to come above Johnson's Fort, into Cooper or Ashley river, in this Province, before all the negroes imported or brought in such ship or vessel shall have been landed and put on shore on Sullivan's Island aforesaid, and they shall have remained for the space of ten days, or have been carried on shore five days in the said space of ten days, or have been on shore six hours in each of said days in the summer and five hours in the winter, that they shall be so on shore, at the party's own election, for the better purifying and cleansing the said slaves and vessel from any infectious distemper; any law, usage or custom to the contrary in anywise notwithstanding. And in case any negroes or slaves so imported and brought into this Province over the bar of the harbor of Charlestown, shall be sold, landed or put on shore in any part of this Province before such negroes or slaves have been landed and remained by the space of ten days, or carried and remained on short five days on Sullivan's Island, as aforesaid, (unless such negroes and slaves, upon apprehension of the dangers of a hurricane or other imminent danger, shall, by his Excellency the Governor, or the com-

mander in chief for the time being, be removed from thence to some other place in this Province without the limits of Charlestown,) all such negroes and slaves shall and they are hereby, declared to be forfeited, the one-half to his Majesty, for the use of the government of this Province, to be applied as the General Assembly, from time to time, shall direct, and the other half to him or them that will inform and sue for the same, to be recovered in any court of record in this Province, wherein no ensign, protection, privilege or usage of law shall be admitted or allowed, nor any more than one imparlance.

Laws of Georgia, 1820, page 190, Act passed December 14th, 1793:

SEC. VII. Whenever the Governor, or commander in chief for the time being shall find it necessary to give any orders or directions for preventing any contagious distemper being brought into this State, or from any part of this State infected therewith into any uninfected part of this State, by persons travelling by land or by water, it shall and may be lawful for the said Governor or commander in chief, by proclamation for that purpose to be issued, to prohibit all and every person or persons coming from such infected places to enter into or come within such bounds, limits or lines as shall be in such proclamation described, for and during such time as shall be therein mentioned, and to appoint boats and sentinels to put the same in due execution; and the persons appointed, and every one of them, shall have the same power to compel any person attempting to pass through or within such bounds, limits or lines to return, as is by this act given to the persons to be appointed for seeing quarantine duly performed, and shall be liable to the same penalties for suffering persons wilfully to pass through or within the same; and all and every person and persons wilfully passing through or within the said bounds, limits or lines shall be liable to the fine or imprisonment hereinbefore directed in case of any persons quitting any ship, vessel or boat performing quarantine, and to be disposed of as in that case provided.

SEC. XI. The health officer of the port of Savannah and the visiting physicians of any other port that shall visit any vessel or vessels, and grant a certificate of the health of the crew and passengers on board, or visit the same, if directed so to do under this law, shall be entitled to have and receive the following fees from the captain or owner of such vessel, before such vessel shall be permitted to enter: For every ship, scow, brig or hilander, two dollars; for every schooner, sloop, perriager or boat, one dollar; coasting vessels coming from one inlet in the State to another in the same excepted.

SEC. XII. *And be it further enacted*, That from and after the passing of this act, every master or commander of any ship or vessel, who shall arrive in this State with any negroes on board, exceeding ten in number, from Africa or elsewhere, shall, before such vessel be permitted, upon any pretense whatever, to enter, be obliged to land and put on shore all such negroes, there to remain for and during the term of ten days, and shall suffer them to be and remain on shore at least six hours in summer, and five hours in winter in each of the said ten days, and shall suffer them to be and remain on shore at least six hours in summer, and five hours in winter, in each of the said ten days, at the parties whose election, for the better purifying and cleansing the said ship or vessel and slaves from any malignant or contagious distemper, any law, custom or usage, to the contrary notwithstanding.

February, 1743: "*An act passed by the General Assembly of Rhode Island, in February*, 1743, *to prevent the spreading of small-pox and other contagious sickness in this colony.*"

The folowing is the preamble:

"Whereas, the small-pox and other contagious distempers have been several times brought into this colony by masters of ships and other vessels coming from infected places, which has proved of pernicious consequence to the trade, and greatly endangered the lives of many of the inhabitants of this colony, and occasioned a very great expense to the town of Newport in particular;

"And whereas the laws to prevent the same, by reason of their great number, and the various occasions on which they were made, are become perplexed and intricate."

The first section repeals all laws heretofore made relating thereto, and declares that "the following rules and orders for the future shall be kept and observed"

The first and second enactments repeat, with but slight and unimportant differences, the portions of the law of 1711.

The act of 1743 enjoins—

"That the Governor, Deputy Governor assistants, justices and wardens as aforesaid, be and they are hereby empowered and directed to send a doctor or other suitable person to examine into and to make report to him or them, respecting, of the true state of such vessel and the people on board, at the charge of the master or commandant of said vessel; and the naval officer is hereby forbid to clear out such vessel till said charge (having been adjudged and settled by the Town Council of the town where such vessel shall arrive) is fully satisfied and paid.

"That the Town Council of Newport or other town as aforesaid, be and they are hereby empowered and directed to confine on board said vessel, or send to some pest-house, all persons, mariners or passengers, or others that came in said vessel, for a convenient time until such of them as have or are liable to have the small-pox, or other infectious distemper, are perfectly recovered and cleansed from said distemper, or have passed a suitable quarantine, and also other persons that have gone on board such vessel without license, as aforesaid, at the charge and expense of such persons respectively, and also all other persons that came in said vessel, until they have been sufficiently aired and cleansed.

"That the Town Council of the town where such vessel arrives, be and they are hereby empowered and directed to appoint two persons to take effectual measures that all goods, wares, merchandise imported in such vessels, which they think liable to hold and communicate the infection, be

landed on some of the islands of the Narragansett Bay, and exposed to the sun and air and cleansed, not exceeding ten days, nor under six days, before they are permitted to be brought into any house, shop or warehouse, other than where they are cleansed as aforesaid; and when such goods are sufficiently aired and cleansed, said persons shall give the owners or possessors thereof a certificate; and the Town Council shall allow or order said goods to be delivered to the owner or owners thereof; and the charge and expense of landing, airing and cleansing such goods, wares and merchandise, shall be borne by the respective owner or owners; and all goods that shall be judged by the Town Council not liable to hold the infection shall be delivered to the owner or owners, without delay and expense of airing, so soon as may be consistent with the safety of the town in regard to parts of the cargo. And all goods, wares or merchandise imported into any town in this Colony by land from any place infected with the small-pox or other contagious distemper shall be aired, cleansed, at the discretion of the Town Council of such town, and at the expense of the owner or owners thereof."

"That, all goods imported in such vessel as aforesaid, that shall be clandestinely landed or brought into any house, shop or warehouse—without certificate or allowance as aforesaid, or that shall be imported by land as aforesaid, and not cleansed or aired by order of the Town Council as aforesaid, shall be forfeited; one-third to and for the use of the Colony, and the other two-thirds to him or them that shall inform and sue, for the same in the inferior courts of Common Pleas, in the country where such offence shall be committed. And all assistants, justices and wardens are hereby empowered and required, upon information given them, to seize and secure all such goods, wares and merchandise in their respective jurisdiction and legal trial.

"That, the Town Council of Newport, or other town as aforesaid, be, and they are hereby empowered and directed to fix, settle and adjust all wages and charges demanded by persons employed by them to secure such vessel or to air

and cleanse such goods, or to attend upon and nurse such person, as aforesaid. And that if any owner, freighter, or mariner or passenger, as aforesaid, shall refuse to pay such wages and charges, so settled, adjusted and fixed by the Town Council, that then the Town Treasurer of such town is hereby empowered and required to sue for and secure such wages and charges, if above five pounds, in the inferior court of Common Pleas in the county where such charges shall be adjusted and settled; and if under that sum, then before any two justices or wardens, as in the case of other actions.

"And the judges of such Court where the action is brought are hereby empowered to lay double costs for the plaintiff, any law, custom or usage to the contrary notwithstanding.

"That for the better security of the payment of what charges may arise for the nursing or attendance upon any sailor or mariner belonging to such vessel, as aforesaid, the master thereof is hereby required to stop payment of the wages due to such mariner until certified from the Town Council that such charges are fully satisfied and paid, on penalty of paying the same so far as the amount of the wages so paid by him; and no Court in that Colony shall make up judgment for any such wages until satisfaction be made as aforesaid. And this act being pleaded in any Court, when such wages, if sued for by such mariner, shall be a temporary bar of such action, any law, usage or custom to the contrary notwithstanding. And the master or owner of any servants or slaves on board such vessels, or the persons to whom such slaves are consigned, shall pay all charges arising from them for their nursery or attendance.

"That the master of any ship or other vessel coming into the harbor of Newport who shall refuse to bring to his vessel when the gunner of Fort George shall fire a shot at him, shall pay ten shillings for the first shot and twenty shillings for the second, and five pounds for every shot afterward, to and for the use of the Colony, and three shillings to the

Naval Officer, as his fee for receiving the same, who shall not clear out said vessel till the same be paid."

The remainder of the Act relates to the prevention of small-pox from the towns or colonies of New England, and to the isolation and control of this disease within the county and town of Newport.

It will be observed that all the essential principles of the quarantine system of Louisiana, as established in 1855, had been established and enforced by the laws passed by the General Assembly of His Majesty's Colony of Rhode Island and Providence Plantations, in relation to quarantine, in 1711, 1731 and 1743.

The acts of 1747 and 1748 announced the same principles.

The Act of 1748 declared "that all the expenses incurred" in confining the sick with contagious diseases on board, or in sending them to the pest-house, as well as all expenses of nursing and infection, "*shall be at the charge of the owners.*"

The most essential provisions of the Act of 1748 are as follows:

"*Therefore, be it enacted*, That no infected vessel be anchored within one mile of any landing place, under the penalty of sixty pounds; that no person shall come on shore without a proper license; that a physician shall be sent on board to examine the vessel and crew, and make a true report of the same; that the Town Council of Newport, or other town, shall have power to put a suitable person on board to prevent communication; that the said Council shall have power to confine the people on board or send them to the pest-houses, and that all goods arriving in such vessels shall be properly aired and cleansed.

"That all the expenses incurred in consequence of said vessels shall be at the charge of the owners."

May, 1752, "An Act to prevent the small-pox from being brought into the Colony by strangers and travellers coming from infected districts."

In May, 1776, the General Assembly passed an Act permitting inoculation for the small-pox in this Colony.

An Act was passed by the General Assembly in 1798 confirming the sanitary laws entered enacted in 1743 and 1748, and authorizing the Town Councils to make regulations for the preservation of the health of the inhabitants, and the Governor to appoint health officers in every port deemed by him necessary, in order to visit all vessels suspected of having contagion on board, and to carry into effect the provisions of this Act.

Acts were passed in 1806, 1816, 1822 and 1840 by the General Assembly, conferring from time to time on the Town Councils, or the Board of Aldermen in the several towns, sufficient authority to guard the people against contagious diseases.

With regard to the yellow fever and cholera, the Town Councils acted efficiently, deriving their authority from the ancient laws, given here, against small-pox and other contagious diseases.

STATE OF NEW YORK.

The first quarantine act seems to have been passed by the Colonial Legislature in 1755; previous to this date, however, there were many acts of the Council of New York, as those of September 17, 1702, April, 1714, January 31, 1716, April 1, 1742, designed to prevent the importation of small-pox or other malignant fevers of the West Indies, and their spead in the provinces.

In 1755 the Colonial Legislature of New York passed the first quarantine law, entitled "An act to prevent infectious distempers being brought into this Colony, and to hinder the spreading thereof."

Sections 1 and 2 defined the place and mode of performing quarantine, and specified the duties of officers and pilots, and fixed the penalties for the violations of this act.

The third section of this law provided for the appointment of "*some surgeon or physician to inspect all vessels*," and fixed his compensation for this service, and was as follows:

"SEC. 3. That in case any vessel shall come from any place visited with such contagious distemper, or have any person or persons on board actually infected with the small-pox, yellow fever or other contagious distemper, and the commander of such vessel, upon demand made as aforesaid, shall not make a true discovery thereof, such commandant shall forfeit the sum of five (two) hundred dollars. And the Governor or Commandant-in-Chief of this Colony is hereby authorized and empowered to appoint some surgeon or physician to inspect all vessels and persons suspected of having on board, or being visited with any of the said infectious distempers, who is hereby required immediately to go on board of such vessel and make strict inquiry in the premises, and report the same accordingly, for which inquiry and examination such surgeon or physician shall be paid by the owner or master of the said vessel the sum of twenty-eight shillings for each such examination."

There is evidence to show that Dr. John Bard was the first physician (quarantine officer) appointed under the act of 1755, and that he continued in office until he left the city in 1773.

A quarantine act, with similar provisions, was enacted on the ninth day of July, 1756, the only amendment being to raise the fee of the surgeon or physician appointed to visit or inspect vessels from twenty shillings to one pound eight shillings.

The law of 1756 having lapsed by expiration of time, a new law, with essentially the same provisions, and retaining the inspection fee of the quarantine surgeon or physician at twenty-eight shillings for each inspection, payable by the master or owner of the vessel, was enacted March 24, 1758, entitled "*an act to prevent the bringing in and spreading of infectious distempers in the Colony.*"

The law of 1758 was re-enacted December 13, 1763, to continue in full force until January 1, 1768; on the 24th of December, 1768, it was continued in full force until January 1, 1775; it then expired by limitation, and as the Revolutionary War came on, was not re-enacted. It was not un-

til the seventh session of the State Legislature that the subject of quarantine again attracted the attention of the Governement; and on the fourth of May, 1784, an act was passed, entitled "An act to prevent the bringing in and spreading of infectious distempers in this State," which was in intent, and nearly in terms, the same as the law of 1758. The title was the same as the law of 1758, except the substitution of the word "State" for that of Colony.

In the law of 1784 the term "ports and harbors of the State" are substituted for "ports and harbors of this city;" in that of 1758 the health officer was appointed by "the Governor or Commander-in-Chief of the Colony, the person so appointed was "some surgeon or physician," and in 1784, "a physician;" the fee of twenty-eight shillings was to be paid the health officer for each visit and report, by the commander of such vessel; the fines and forfeitures under the Act of 1758 were to be paid, one-third to the informant, and the remainder for the support of the Government of the Colony, and under the Act of 1784 they were to be applied to "the use and support of the lighthouse at Sandy Hook, for the security of commerce"

This law remained in force unchanged for ten years.

Meantime, with the renewal of commerce with the West Indies, yellow fever again made its appearance in New York. In 1791 it broke out in the neighborhood of Peck Slip, and spread to other parts of the town, causing a large mortality. On the 27th of March, 1794, an Act was passed "To amend the Act of 1784, entitled an Act to prevent the bringing in and spreading of infectious distempers in this State." In the first section it provided that the Act "*shall extend to all vessels coming from any port or place whatever.*"

On the first of April, 1796, a new quarantine law was enacted, Section 1 of which provided, "That a person practicing physic shall be appointed health officer for the city of New York, and that seven persons shall be commissioners of the health office for said city, and by which several names of office the said persons shall be respectively known in the law."

Section 2 specifies in regard to quarantinable vessels as follows: "All vessels arriving in the port of New York from ports beyond the sea, having on board forty passengers; all vessels arriving in the said port having on board a person sick with a fever; all vessels arriving in the said port, on board of which a person may, during the time such vessels were at the foreign port from which they last sailed, or during their passage thence to the port of New York, have died of a fever, and all vessels arriving in the said port from places where, at the time of their departure, an infectious disease prevailed, shall be subject to quarantine of course."

The Governor was authorized to issue his proclamation declaring what other vessels to be described as coming from the countries, islands or ports therein to be mentioned, shall also be subject to quarantine; and to assign the limits to the places where all vessels subject to quarantine shall come to anchor, and remain until the health officer shall have examined them and reported "to some one of the commissioners to be free from infection." The Governor was also empowered to prohibit or regulate the intercourse by land or water between the State of New York or any place or State in the United States where he is informed that an infectious disease prevails.

The commissioners were empowered to remove to the quarantine grounds any vessel in the port of New York upon which a case of contagious disease appeared, or having on board articles which may be apprehended to contain infection; and to cause all persons and articles which may have been landed to be arrested and seized and returned to the vessel, or removed to the lazarette; also to cause all persons coming into the State in violation of the proclamation to be arrested, or if well, to be conveyed to the place out of the State from whence they had come, or if sick to be removed to the lazarette.

On the tenth of February, 1797, an act was passed to amend the act entitled: "An act to prevent the bringing and spreading of infectious diseases in this State."

It provided that there "shall be three persons appointed commissioners of the health office of the city of New York," who, with the health officer, were invested with "all and singular the powers granted to the commissioners of the health office for the said city."

"All coasting vessels coming from any place south of Cape May, although not subject to quarantine, of course, shall be liable to examination, if the health officer shall deem it expedient, by some fit person to be by him deputed, who shall have such reasonable compensation for his services and paid by the commissioners, as they shall deem right." Quarantine was in all case to continue as many days as the commissioners should deem necessary. No vessel arriving in the port of New York, otherwise, and subject to quarantine of course, shall be exempt from such quarantine by reason of having previously touched or entered at any port within the United States, unless such vessel shall have remained in such port for the space of ten days.

The health officer was required to report all vessels subject to quarantine which he found free from infection "to some one of the said commissioners, and he shall be entitled to receive from the master of every vessel to be visited by him or coming from a foreign port, the sum of three pounds, and if coming from a port within the United States, the sum of thirty-two shillings for his services therein;" he was empowered to put all necessary questions to the persons on board any such vessel and to administer an oath.

The person administering the Government was authorized to cause the erection of a building suitable for a lazarette on Nutten Island (Governor's Island), "or on any other land which may be deemed more eligible, which other land he is hereby authorized to purchase for the people of the State."

The Health Officer was to be the physician to the lazarette and the "Commissioners of the Health Office were to have the superintendence thereof, and employ nurses and attendants, and provide bedding, clothing and provisions, medicines, and other matters as shall be requisite therein."

All persons removed to the lazarette were "liable to pay a reasonable sum for their board, medicine and attendance therein," and the commissioners were to recover by suits in their own name, if pay was refused.

The Health Officer was authorized to destroy infected bedding and clothing arriving in vessels subject to quarantine.

It is not necessary, in our argument, to trace in full the growth of the quarantine system of New York, which has not only advanced with the growth of this mighty metropolis, located at the entrance of the great channels through which foreign commerce and emigration enter the United States, but has kept pace with the progress of sanitary knowledge, until its equipments have been so perfected that they now meet the highest demands of science, and promote the highest interest of commerce.

From these statutes, which are the only ones to which we have been able to find access with the bunched libraries at our command, it will be seen that fees were charged for inspections irrespective of the fact whether there existed disease on board or not. It is also apparent in lieu of them that all negroes imported were inspected and removed from all vessels conveying them and the expenses borne by the owners of the vessels. Inspection was enforced and charged for all vessels whom the Governor or other officers designated by law had reasonable belief that they might convey infectious diseases. Thus the principle was thus early asserted that any vessels deemed suspicious should be inspected and inspection fees charged against them. Louisiana has only put in practice in her law the same principle. She, in common with all other commercial States, has perfected her quarantine laws. With the introduction of steam, and the consequent rapidity of communication between all ports, with the rapid increase of population in the United States all the sea-board States have seen that the danger was imminent of being infected from nearly any port at any moment. From the North small pox and the other contagious diseases of a colder climate threatened them at all sea-

sons; from the South infectious fevers, and from the East cholera, leprosy and other similar diseases were and are liable to be introduced at any time. Thus all these States have, instead of placing the power of naming suspected places liable to inspection and inspection fees in the hands of particular officers, declared by law that all ports and vessels coming therefrom are to be deemed suspected and must be inspected and the fees therefor paid by the vessels. It is the same principle that permeated and controlled the colonial legislation. Congress has approved and provided for the carrying into effect these laws.

Chief Justice Marshall used the following language to-wit:

"The acts of Congress, passed in 1796 and 1799, empowering and directing the officers of the General Government "to conform to and assist in the execution of the quarantine "and health laws of a State, proceed, it is said, upon the "idea that these laws are constitutional.

"It is undoubtedly true that they do proceed upon that "idea, and the constitutionality of such laws has never, so "far as we are informed, been denied.

"But they do not imply an acknowledgment that a State "may rightfully regulate commerce with foreign nations or "among the States; for they do not imply that such laws "are an exercise of that power, or enacted with a view to it. "On the contrary, they are treated as quarantine and health "laws, are so denominated in the acts of Congress, and are "considered as flowing from the acknowledged power of a "State to provide for the health of its citizens. But as it "has appeared that some of the provisions made for that "purpose, and in virtue of this power might interfere with "and be affected by the laws of the United States made for "the regulation of commerce, Congress, in that spirit of "harmony and conciliation which ought always to characterize governments standing in the relation which the "union of those of the States have to each other, has directed "its officers to aid in the execution of these laws, and has, "in some measure, adapted its own legislation to this object "by making provisions in aid of those of the States. *But*

"in making those provisions the opinion is unequivocally mani-
"fested that Congress may control the State laws so far as it
"may be necessary to control them for the regulation of com-
"merce" 9 Wheat. 205

That inspection fees are compensation for service is evident.

In the pilot cases the U. S. Supreme Court touched upon what is to be considered a service or compensation for service, and has decided that an actual doing of laborer's work is not necessary to constitute a "service," in the eye of law for which compensation can be demanded. 12 Howard, p. 312.

"There are many cases in which an offer to perform, accompanied by present ability to perform, is deemed by law equivalent to performance. The laws of commercial States and countries have made an offer of pilotage service one of those cases, and we cannot pronounce a law which does this to be so far removed from the usual and fit scope of laws for the regulation of pilots and pilotage as to be deemed, for this cause, a covert attempt to legislate upon another subject under the appearance of legislating upon another."

And in 2 Wall. 457, that Court quotes this doctrine of Mr Justice Curtis (the organ of the Court in that case) with approval, and affirms it.

So we say here that the inspection of all vessels and tender to fumigate and disinfect by the quarantine service, the maintenance of the expensive paraphernalia for quarantine purposes, etc., are as much a service rendered, by the same reasoning, as in the pilot cases. But it is urged that it is no service to a vessel bringing a clear bill of health, whatever it may be to an infected vessel. That it is a service to the community at large and not to the vessel inspected.

We all know the peculiar conformation of the port of New Orleans and its wharves, by which vessels are necessarily moored alongside each other, in tiers sometimes as many as six or eight deep, the crews and passengers of these vessels cross from one to the other in egress and ingress from and to the shore and to all intents and purposes so far as con-

tagion is concerned, must be regarded as living almost in the same vessel or house. Can it be said that a commerce thus situated and circumstanced is not benefitted and does not derive a peculiar and immense advantage, as the result of the quarantine inspection, although some particular vesssel may not be infected?

That it is for the benefit of the commerce, as well as the community at large is manifest. That the quarantine service and charges are only raised in the legitimate exercise of a police power, and not as a measure of general revenue and tax for the State, is evident from the evidence in this cause, from which it appears that the quarantine fees are insufficient to maintain the quarantine service, and that the State and Board of Health are obliged each year to make up the deficit by revenues from other sources, obtained from its own citizens by tax.

RECAPITULATION.

Our learned opponents concede that the power to establish quarantine existing in the States, prior to the adoption of the Constitution, remains unimpaired by the adoption of the Constitution.

Whether this power is inherent absolutely in the States or precariously exists until Congress has legislated, is not necessary to be determined. Congress has not legislated.

Where a charge is made or burden imposed at so much per ton, the measuring of the charge or burden by the tonnage of the vessel does not, of itself, render the charge a tax on tonnage. The power to make the charge, not the mere method of fixing its amount, determines its validity.

Now, the statutes attacked as violating the commerce and tonnage clauses of the Constitution, impose no tax or burden, as such on any vessel. They ordain and establish a quarantine; they provide for the inspection of every vessel; for fumigation and other precautionary measures when deemed essential. The only *charge author-*

ized to be made is a fee for the service of inspection and for fumigation when the latter is considered as required. The case, therefore, involves no issue but the validity of the charge *for the service of inspection and fumigation when required.*

Before discussing this question, we desire especially to direct attention to the irrelevancy of the authorities on which our learned opponents rely. Questions involving the construction of the tonnage and commerce clauses of the Constitution have been so frequently before the Supreme Court, have been passed on so often and in such various phases that it becomes particularly necessary to discriminate and analyse the cases in order to determine their application. The cases mainly relied on are Steamship Company vs Port Warden, 6 Wallace 31, and Peet vs. Morgan, 19th Wall. 581.

Are these cases at all applicable to the present issue?

In the Port Warden case a law of this State was declared unconstitutional because it imposed a *charge on every vessel coming* to the port of New Orleans, whether any inspection was had or not. In other words the *ratio decidendi* of the case is and was want of constitutional power to impose on every vessel a charge in favor of the port wardens, whether they surveyed the vessel or not. In the present case, as we have seen, the question is the right to a reasonable fee, where the inspection is made.

The case of Peet vs. Morgan presents a like aspect. By a sweeping statute of the State of Texas a *charge of so much per ton* was imposed on every vessel arriving in any port in Texas, *entirely without any reference to any services of inspection or of any other services whatever.* In other words, like the Port Warden case, Peet vs. Morgan involved the right to make a charge on the vessel without regard to an inspection, or other services, while this case presents the question of the power to charge for services of inspection actually made. Could more opposite cases be supposed than one involving the power to make a charge on tonnage for doing nothing and one presenting the right

to charge for work actually done? In Transportation Company vs. Parkersburg, 107 United States, the Court said, speaking of the Port Warden and Peet cases: "The same view had previously been taken of an act of the Legislature of Louisiana authorizing the Port Wardens of New Orleans to demand and receive five dollars from every vessel arriving in that port, *whether called on to perform any work or not*, * * * * and of a law of Texas which required every vessel arriving in any town on the coast of Texas to pay five dollars for the first hundred tons, etc. * *" pp. 697-98.

This is the last expression of opinion by the Supreme Court, as to the significance of Peet vs. Morgan, and the Port Warden case. We contend that the line of demarcation is broad, plain, unmistakable and involves the difference between levying a duty on vessels, while *doing nothing* as a consideration, and levying a contribution for a *legal and valid service.*

The reference to People vs. Compagnie Generale Transatlantique, 107, U. S. page 60, is, we think, equally irrelevant. The New York statute passed on in that case was as follows: Sec. 1. "There shall be levied and collected *a duty* of one dollar for every alien passenger who shall come by a vessel from a foreign port to the port of New York." * * * * The Court held that the duty was a tax on commerce within the statute. Manifestly such was the case. In so far as it was sought to support the exaction under the power to pass inspection laws, the Court said: "We feel quite safe in saying that neither at the time of the formation of the Constitution nor since, has any inspection law included anything but personal property." Having thus, as we think demonstrated the inapplicability of the authorities quoted against us, we will discuss the issue which we think the case presents, which is: Under the quarantine laws can a charge be made for the actual inspection of vessels arriving at quarantine stations? That the power exists in the States to establish quarantine is, we have seen, fully conceded. That such admitted power

carries with it the power to direct inspection of vessels, is equally unquestioned. Having the power to quarantine and as an incident to such quarantine, to provide for inspection, is the charge for such service a regulation of commerce, or a tax on tonnage within the intendment of the Constitution of the United States? We say within the intendment of the Constitution of the United States, because, of course, every possible levy on property of any kind, is in a latitudinarian sense, a regulation of commerce. Every possible charge on a vessel is a tax on tonnage in such broad sense.

Although, as said by Judge Cooley in his Constitutional Limitations "the line of distinction between that which constitutes an interference with commerce, and that which is a mere police regulation, is sometimes very dim and shadowy," (p. 586;) we contend that it may be with accuracy postulated as follows:

I.

That an act of the State by which it makes a charge for a legal service, is neither a regulation of commerce, or a tax on tonnage. The very absence of authority against the proposition is its strongest affirmance. It is not denied that at the time of the adoption of the Constitution of the United States, the Colonial and Confederated Governments had ordained quarantine, had provided for inspection thereunder, and made a charge for the service so rendered. It is equally unquestioned that since the adoption of the Constitution, the quarantine laws of New York and other States, have made a charge for inspection.

Does this not show not only the contemporaneous, but also continued construction of the Constitution, which has obtained. We have shown in the former part of this brief that not only at the time of the adoption of the Constitution and since, but everywhere by publicists and deliberative bodies, the quarantine power was considered and entreated as embracing *ex vi terminorum* the right to inspect and the authority to charge for inspection service. Now, it being un-

doubted that the right in the States to establish quarantine is reserved, does it not of necessity follow that the existence of the power carries with it those incidents, which at all times and under all circumstances, have been considered and practically treated as a part of the quarantine power. In fact, the concession of the power in the State to establish quarantine, carries with it, as we think, the whole case. The existence of the right to ordain quarantine, means quarantine as usually and at all times understood. Quarantine, as thus defined embraces the power to inspect vessels and to charge for the service of inspection, therefore quarantine in the States includes like incidental power.

II.

But there is an implication in favor of the power to charge for the service of inspection, more direct than that which flows from the general understanding of the quarantine power, and the incidental authority usually attributed to it.

We have shown in this brief that at the time of the adoption of the Constitution of the United States, the quarantine laws of the various States provided for the inspection of vessels and made reasonable charge therefor. We ask careful attention to the reference to the colonial legislation as collected in the brief hitherto filed. That the adoption of the Constitution has left unimpaired in the States (at all events until Congress has legislated), the power to quarantine and inspect, is as we have seen, removed beyond controversy. Now then, we maintain that leaving in the States the power to quarantine and inspect, that which was then considered as an incident to the power to quarantine, remained with the power to which as an incident it adhered. Quarantine existing in the colonial governments, embraced the authority to provide for the inpection of every vessel and to charge therefor, the power was so exercised by the colonial governments at the time of the adoption of the Constitution. The Constitution left in the States the power to ordain quarantine, to regulate its

exercise. The power having been left where it was lodged, when the Constitution was adopted, remains unshorn of any of the incidents which it imported at the time of the a option of the Constitution.

In other words, the authority to quarantine, as existing and exercised by the colonial governments, having been left in the States, was so left unimpaired of any of its accessories. Indeed, the proposition seems to us unanswerable. Either the Constitution, by its adoption, abrogated the power to quarantine or it did not. If it did, we have no case. If it did not, the accessory right continues to exist with the life of the power from which its being flows. Our learned opponents, we submit, do not sufficiently repel the force of the above reasoning. They admit that the power to quarantine, has been left by the Constitution in the States, but urge that as the fee for actual inspection as charged by the Colonies is a tax on tonnage or a regulation of commerce, therefore it can be no longer collected by the States. This is mere *petitio principii*. The very question which this case presents is whether a charge for inspection is a tax on tonnage, or a regulation of commerce. The very argument is that existing in the Colonies as as incidental quarantine power, its further exercise was not inhibited, because it was not expressly and particularly forbidden by the Constitution.

By analogy of reasoning, our theory has been frequently sanctioned by the Supreme Court of the United States. In Turner vs. Maryland, 107 United States, page 38, the validity of a law of the State of Maryland was assailed because of its claimed violation of the tonnage and commerce clauses of the Constitution. The Maryland statute provided for an inspection of tobacco and made a charge for the service of the inspector. The Court held the law constitutional. In that case as in this it was unquestioned that the power to pass inspection laws remained in the State. There as here it was claimed that despite the power to pass the inspection laws—the charge for the same was unconstitutional. The Court overruled this p etention. One of the most persua-

sive views stated by Mr. Justice Miller was predicated on the fact, that the colonial laws existing at the time of the adoption of the Constitution, were guides by which to determine the nature and extent of the power of the State as to inspection, under the Constitution.

Speaking of the colonial laws in force at the time of the adoption of the Constitution, the opinion says: "In view of such legislation existing at the time the Constitution of the United States was adopted and ratified by the original States, known to the framers of the Constitution, who came from the various States and called inspection laws in those States, it follows that the Constitution, in speaking of "inspection laws, included such laws and intended to reserve the States the power of continuing to pass such laws—even though to carry them out * * * * it became necessary to impose charges which amounted to duties or imposts on exports to an *extent absolutely necessary to execute such laws.*" We have already called attention to the fact that in Compagnie Generale Transatlantique the scope of the colonial legislation on a particular subject was referred to as a test of the limit of the power of the States on the same subject—when within the power of the latter after the adoption of the Constitution. A like process of reasoning was availed of in Cooley vs. Port Warden, 12 Howard, 299; in Steamship Company vs. Joliffi, 2 Wallace.

III.

Apart from the cogency of these views it is manifest that an adequate charge for the service of quarantine inspection is not a tonnage tax or a regulation of commerce. The source whence comes the power to do the act for which the charge is made seems to have been made the test in Gibbons vs. Ogden. 9 Wheaton, p. 203; Turner vs. Maryland, 107 U. S., 51.

The right to direct the quarantine inspection arises not from any assertion of governmental authority, to regulate commerce or tax tonnage, but from the power to establish quarantine. Authority flowing from a valid and Constitu-

tional exercise of power, does not become constitutionally inoperative, because by its exercise, as was said in Gibbons vs. Ogden, it "*may have a remote and considerable influence on commerce.*" The power is the test, not the mere indirect effect to come from the exercise of an incident adhering to it by necessary implication. Such is the distinction uniformly maintained in the books.

Thus in Cooley vs. the Port Wardens, 12th Howard, 299, the charge for pilotage was maintained even *where no service was actually* rendered, because the charge was an incident to the unquestioned right to regulate pilotage. In Turner vs. Maryland, 107 U. S., 38, the charge of an inspector was held valid because the power to make the inspection was beyond cavil. In Transportation Company vs. Parkersburg, 107 U. S., 692, a charge of so much per ton for landing at a wharf, was upheld because flowing from the power to establish wharves.

In every case the question has been one of power to do the act for which the charge was made. Now, it cannot be said that quarantine inspection is not an incident to quarantine authority. We have seen, that not only on the Continent, but in the Colonial Governments, almost coeval with their birth and continuing during their existence, quarantine, quarantine inspection, and the charges therefor, went hand in hand.

In speaking of the charge for pilotage, where the service of the pilot was not called for, Mr. Justice Curtis, in Cooley vs. Port Wardens, said: "Testing it by the practice of commercial States and countries legislating on this subject, we find that it has been usually deemed necessary to make similar provisons. Numerous laws of this kind are cited in the learned argument of the counsel for the defendant in error, and their *fitness as a part of a system of pilotage in many places may be inferred from their existence in so many different States and countries.*" The italics are our own.

IV.

But the charge for the service of inspection is so patently not a tax on tonnage—or a regulation of commerce, that irrespective of the other views, its validity should be upheld. In Cooley vs. Port Wardens, as we have seen, a charge for the service of a pilot was supported, although the master of a vessel declined to allow the pilot to render services. Mr. Justice Curtis saying, as the organ of the Court: "There are many cases in which an offer to perform, accompanied by present abilily to perform, is deemed by law equivalent to performance."

In Turner vs. Maryland, the Court said: "The necessity thus existing for subjecting the hogshead to inspection under all circumstances, a charge of some kind was proper * * * Such charge appears to be a charge for service properly rendered." The inspection directed by the laws of this State are directly a service to the vessel. That it would be a lawful exercise of legislative power for the State law to cause every vessel to endure detention at quarantine, is unquestioned. As a service to the vessel, for the purpose of avoiding the cost to the ship and the loss to commerce, the law has provided an inspection to avoid what would become the otherwise imperative detention.

This marks the difference between this and the Port Warden case, 6 Wallace, 31. There was no authority in the State to detain a vessel for the purpose of matters coming within the scope of a Port Warden's duty. In this case the power of the State to provide detention for the purpose of quarantine is undoubted. If she, in the interest of commerce and of the vessel, provides an inspection in order to avoid the restraints of quarantine, the ship is the immediate beneficiary of the service of inspection.

V.

The record shows that the receipts from quarantine do no more than pay the actual cost of the various stations What is required beyond, comes from the public treasury. It is idle therefore to consider this as a case involving on

the part of the State an attempt to raise revenue by indirection. If the State sought within her legal powers by subterfuge and indirection to so do, it may be doubted whether the remedy must not come from Congress. It may be doubted, says the Court, in Turner vs. Maryland, "whether it is not exclusively the province of Congress and not at all of a Court to decide whether a charge or duty under an inspection law is, or not, excessive.

Again in Transportation Co. vs. Parkersburg, 107 U. S. 695: "The allegation of the bill, that it is not real wharfage, but a duty of tonnage in the name and under the pretext of wharfage, cannot be received against the terms of the ordinance itself. This would open the door to an enquiry in every case of wharfage alleged to be unreasonable, which would lead to great inconvenience and confusion."

Respectfully submitted,

F. C. ZACHARIE,

ALBERT VOORHIES,

Attorneys.

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Respectfully submitted,

F. C. ZACHARIE,

ALBERT VOORHIES,

Attorneys.

118-455

MOTION TO ADVANCE AND AFFIDAVITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 552.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

THE BOARD OF HEALTH OF THE STATE OF LOUISIANA, AND THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUPREME COURT OF THE UNITED STATES.

No. 552.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY

vs.

THE BOARD OF HEALTH OF THE STATE OF LOUISIANA, AND THE STATE OF LOUISIANA.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now appear the State of Louisiana, through its counsel, Milton J. Cunningham, Attorney General of said State, and the Board of Health of Louisiana, a political quasi corporation, to whom a part of the police powers of the Government of the State of Louisiana is delegated, under the laws of the State, through its counsel, F. C. Zacharie and Albert Voorhies,—defendants in error in the above entitled cause,—suggesting the following reasons for the purpose of having said cause advanced for trial on the docket of this Honorable Court:

That on Nov. 8, 1882, said plaintiff in error, Morgan's Louisiana and Texas Railroad and Steamship Company, proceeded by injunction against said Board of Health of Louisiana, to prevent the enforcement of the provisions of the Louisiana Statute, No. 69, A. D. 1882, regulating quarantine dues for what is called, in the petition, inspection and fumigation services, on the alleged grounds that said imposition constitutes a duty on tonnage and a regulation of commerce, and, as such, are in violation of the Constitution of the United States.

That writs of injunction were issued by the Civil District Court of the Parish of Orleans, "restraining and enjoining said Board of Health of Louisiana from collecting or attempting to collect fees or charges, called quarantine or fumigating dues, or from collecting or attempting to collect from plaintiff's steamers, called: the *New York, Algiers, Morgan City, Lone Star, Chalmette, Excelsior, Morgan, Whitney, Hutchinson, Hewes, Gussie, City of Norfolk, Harlan, I. C. Harris, Aransas, Clinton, St. Mary, and others*, under said Act No. 69 of 1882, or other existing statutes of Louisiana, any charge, fee or duty, for or in aid of the quarantine system of this State,"—"and from seizing or detaining any of said vessels, or from making distinction in the examination and fumigation of said vessels, night or day, from other ves-

SUPREME COURT OF THE UNITED STATES.

No. 552.

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longer, or in any manner treating them differently from vessels paying charges....."

That, upon the issuance of said writ of injunction to, and the joining of issue by the said Board of Health, in the above entitled cause, the State of Louisiana intervened through its then Attorney General, Hon. J. C. Egan, joining said defendant, and praying for the dissolution of said injunction.

That the said Civil District Court, upon trial of said issues, made the injunction perpetual; whereupon an appeal was taken thereon to the Supreme Court of Louisiana, on joint motion of the State of Louisiana and of the Board of Health of Louisiana; that, on the hearing of said appeal, the Supreme Court of Louisiana reversed said judgment of the Civil District Court, and rendered a final judgment in favor of the State of Louisiana and of the Board of Health of Louisiana, against said plaintiff.

That said plaintiff thereupon had said cause removed to this Honorable Court, by writ of error from the Supreme Court of Louisiana.

That both defendants in error fear that said cause may not be reached at the present October term of this Honorable Court, as it stands No. 552 of its docket.

That there are special and peculiar circumstances why said cause should be taken out of its order, and advanced, so as to have an early decision; that it involves and affects matters of general public interest; that said writ of injunction thwarts the quarantine laws of Louisiana and embarasses the said Board of Health in carrying on measures, having for their object to protect the State of Louisiana and other States of the Mississippi Valley against the introduction of yellow fever, cholera and pestilence; and the question in dispute therein will and does embarrass the operations of the State of Louisiana.

That said writ of injunction interferes materially with the finances of said Board of Health; that said plaintiff company have, since the date of its issuance up to the present time, withheld dues amounting in the aggregate to the sum of twenty-four thousand and seventy-five dollar ($24,075), or more, as per annexed exhibit, made a part hereof.

That other vessels, likewise engaged in the coasting and foreign trade, are likewise refusing to pay similar dues for mere quarantine services; that the Cromwell Line Steamship Company have withheld payment of said quarantine dues. to an aggregate sum of eleven thousand three hundred and thirty dollars ($11,330) or more.

That the refusal to pay said dues for quarantine services has in the past impaired, and will, in the future, continue to impair the efficiency of said Board of Health; since said dues are allowed to said Board of Health, strictly for quarantine purposes; and as a matter of fact, said Board of Health has been, and is still in need of said resources, in order fully to discharge its duties in the premises.

Wherefore defendants in error respectfully move that the above entitled cause be advanced on the docket of this Honorable Court, and be allowed an early trial.

M. J. CUNNINGHAM,
Attorney General.

F. C. ZACHARIE,
ALBERT VOORHIES,
Of Counsel for Board of Health of Louisiana.

W. D. McGary & C. W. Horner
attys for Appt.
Defts. in Error

Before me, the undersigned authority, appeared Dr. Joseph Holt, President of the Board of Health of Louisiana, and S. S. Herrick, Secretary of said Board, who, being duly sworn, say that the facts and allegations contained in the foregoing motion are true and correct, to the best of their knowledge and belief.

JOSEPH HOLT, M. D.
S. S. HERRICK, M. D.

Sworn to and subscribed before me, this 23d day of October, A. D., 1885.

M. VOORHIES,
Notary Public.

STATEMENT of the amount due the Board of Health of the State of Louisiana by the Morgan Steamship Company, for quarantine charges on steamers belonging to said company, from June 1, 1874, to Oct. 1, 1885, via the Mississippi Quarantine Station:

Amount due and unpaid from June 1 to Dec. 31, 1874.....	$310 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1875.....	520 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1876.....	910 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1877.....	810 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1878.	695 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1879.....	1,120 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1880.....	1,805 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1881.....	1,600 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1882.....	2,685 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1883.....	3,930 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1884.....	6,660 00
Amount due and unpaid from Jan. 1 to Oct. 1, 1885.....	3,030 00
Grand total.....	$24,075 00

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, the undersigned notary, appeared Dr. Joseph Holt, President of the Board of Health of the State of Louisiana, and Dr. S. S. Herrick, Secretary and Treasurer of said Board of Health, who, being duly sworn, say that the facts and figures contained in the foregoing account are true and correct, as taken from the books of the Board of Health, to the best of their knowledge and belief.

JOSEPH HOLT, M. D,
President Board of Health, State of Louisiana.
S. S. HERRICK.

Sworn to and subscribed, A. D., Oct. 23, 1885:

B. B. HOWARD, *Notarg.*

STATEMENT of the amount due the Board of Health of the State of Louisiana by the Cromwell Line Steamship Company, for quarantine charges on steamers belonging to said company, from June 1, 1874, to Oct. 1, 1885, via the Mississippi Quarantine Station:

Amount due and unpaid from June 1 1874, to Dec. 31, 1874	440 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1875.....	1,080 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1876.....	700 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1877.....	400 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1878.....	505 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1879.....	795 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1880.....	825 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1881.....	780 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1882.....	1,185 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1883.....	1,770 00
Amount due and unpaid from Jan. 1 to Dec. 31, 1884.....	1,650 00
Amount due and unpaid from Jan. 1 to Oct. 1, 1885.....	1,200 00
Grand total.....	$11,330 00

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, the undersigned notary, appeared Dr. Joseph Holt, President of the Board of Health of the State of Louisiana, and S. S. Herrick, M. D., Secretary and Treasurer of said Board, who, being duly sworn, say that the facts and figures contained in the foregoing account are true and correct, to the best of their knowledge and belief, as taken from the books of the Board of Health.

JOSEPH HOLT, M. D.,
President Board of Health, State of Louisiana.
S. S. HERRICK.

Sworn to and subscribed before me, this 23d day of Oct. 1885.

B. B. HOWARD,
Notary Public.

118-455

IN THE

Supreme Court of the United States.

MORGAN'S LOUISIANA & TEXAS RAILROAD COMPANY
vs.
THE BOARD OF HEALTH OF NEW ORLEANS.
No. 552.

Argument of Mr. Evarts for the Defendant in Error.

WASHINGTON, D. C., *April 26th*, 1886.

If the Court please: The question as now presented, as to the degree of interference between the recognized health and police powers, which belong exclusively to the States, and the certain powers that are accorded to the Federal Government in regard to commerce and revenue on commerce, I think is free from some of the attendant circumstances that have controlled decision in cases that have heretofore been presented before this court. The question is in its nature an interesting one. It is a difficult question to distribute to a General Government the control of ports for the purpose of commerce and revenue, and absolutely retain for the States the control and right, in those ports, on the mere question and motive and duty of public health.

Am I not right in stating that under the Constitution, as it now stands, those two subjects are thus firmly discriminated in the partition of authority between Federal Gov-

ernment and the States? In the first place, there is nothing in the Constitution that has the least reference to an encroachment upon, or a regulation of, the subject of health, either internally or in regard to the external ports. In the debates of the Constitution, which brought it into existence, there never was raised a notion that this vital, inherent, domestic question of health was to be accorded to the General Government in the least degree or under any motive. Indeed, the range upon which and for which powers were to be parted with by the States, then a part of their complete fund of power and authority, and were to be bestowed upon the Federal Government, in reference to the objects of the Constitution of the Union and the Government of the Union, excluded from the province of debate any pretension that the Government ment needed those powers in regard to health, or that the States could possibly part with any portion of them. So, too, since the Constitution has been in operation, Congress has abstained entirely from an affirmative administrative, or even regulative, matter of the external ports in regard to domestic health. More than that, when an elaborate statute, in 1799, was passed, and which has remained on the statute book ever since unchanged, unquestioned and undoubted in its wisdom, it came only to the aid of the powers of the States in maintenance of the duty as well as of the authority that the States were charged with in that regard. I need not urge that in the nature of health and quarantine against the invasion of pestilence, *that* question is for the moment the supreme question. Commerce for trade, commerce for wealth, commerce for revenue, great and vast as those interests may be, great as its authority, great as the efficacies of the clauses of the Constitution in its ample maintenance, when the question of invasion of pestilence to corrupt the health and destroy the people arises, that is the supreme question then. Commerce must be laid aside in every degree if the exigency of the situa-

tion shall require it. Vessels may be excluded from the ports, by the division of the months or the regulation of the time, that the pestilence shall dictate.

The statute of 1799, to which I beg your Honors will give full attention, in its details and circumstances, goes upon that proposition, that the State may close its ports, absolutely close its ports, by reason of health and quarantine and other exigencies that may require it. This statute bows to this King of Terrors, although there is before it the largest deposit of responsibilities and duties as to commerce. It yields to it. It enables the collectors and all the subordinates of the revenue system to retire, to close their offices, and to take such position for the exercise of this revenue authority in other places as the State laws shall have indicated as is compatible with the preservation of health. So, too, the revenue vessels are put at the service of aiding the States, out at sea, in the execution of the health laws which have to do with the internal health, and far off would forefend the danger that cannot be admitted as an intruder, if it can possibly be excluded. Now, then, you have this absolute condition of things: that, *eo nomine*, under that motive and upon that duty, the Constitution has conferred no authority, no responsibility, and no duty. Necessarily, then, all the power that the exigencies of a trading nation, or the exigencies of a humane and benevolent nation may require, belongs to the States. It is rounded out as large now as it was before the Constitution was framed; and the only question that ever yet has been raised and has been made a subject of decision by this court, in regard to a conflict between the supremacy of the health and quarantine regulations and the authority of Congress, has been a question, not which of those authorities had full occupation of the domain and absolute authority against the intrusion from the other, but whether particular and definite authority, wholly given to the Government and withheld from the State, must then yield to this

general proposition of the supremacy of the authority of health and quarantine. That was on a question of tonnage, and the surrender to this clause on the part of the State authority was not claimed on the ground that this was an intrusion by the Government upon the province of health, but that it was a positive regulation that no matter what was the power, however unlimited in regard to health, a particular mode of exaction and collection was not permitted, because it was not in any view an encroachment upon the health laws, but because of the absolute and definite adoption of one measure of taxation, and its being absolutely appropriated to the Federal Government and absolutely denied to the States. With this, as I suppose, indisputable demarkation between the two subjects of health and of Government in commerce and revenue, there remains another consideration: If this system of external regulation by quarantine by the Federal Government can be assumed or exercised, if it does not transcend the authority of the Constitution of the United States for this Government to undertake it, you will perceive that the utmost that can be claimed in this behalf for the Government of the United States is that it may regulate—that is, that it may draw the lines between what would be an encroachment upon the admitted commercial authority of the Constitution and what would be a necessary concession by the Federal Government to what belonged to the States.

At least one reason that may have influenced the absolute exclusion from any attempt to give positive authority to the Federal Government respecting the subject, and from an attempt to exercise it by Congress, has been this: The largeness of our country, the diversity of its climate, seasons varying, ports sometimes requiring constant and rigorous protection and surveillance and at other times only occasionally and under particular threats of danger, and the general view of the exercise of commercial authority by the Constitution is that there is to be, as near

as may be—indeed, that there must be—absolute equality and absence of discrimination in the treatment of the different ports and the different parts of the country, make the administration of the quarantine jurisdiction by Congress almost impossible. And there you will see at once that although all the country is interested in the health and in quarantine external schemes, yet the immediate responsibility and the immediate attention belongs to the localities; and the pressure of the mischief and the adequacy of the redress and prevention, are all parts of the then present immediate feeling and duty of the local communities. Besides, the United States cannot intrude on the subject of health beyond the point of the admission or exclusion at the ports under the guise and under the duty, if it is assumed by the Government, of surveillance and exclusion. But all the purpose and all the interest of this immediate attention at the ports has reference to the mass of population and the interests of health within; and it seems to be almost necessary that, on the principle of *omne principale trahit ad se accessorium*, that if a whole mass of power and of duty belongs to internal and domestic interests, this relation to the ports is but a part of, and a manageable and a minor interest.

Now, if the Court please, if this be the relation of our Constitution to these two subjects of health and of commerce and revenue, how much has there been already in the decisions of this court that throws light upon and gives some precision to any conflicts? I have said that in regard to quarantine itself, I believe nothing but the question of tonnage. But how much else is there? We have had the passenger cases; we have had the wharfage cases; we have had the pilotage cases; but none of them related to the subject of quarantine, as the latter had been discriminated, both in the abstinence of the Constitution, in the absence of the debates, in the abstinence of legislation and the absence of questions by the community at large,

by the masses of interest engaged on the question of quarantine. How much, then, is there in these collateral or casual reflections that are to be imparted from these other subjects? It is settled, undoubtedly, that you can lay wharfage, although that is in the nature of revenue, and is connected with commerce as closely as any subject can be; but that you cannot lay a taxation on commerce in its mere trait of visiting or departing from the port without relation to the vessel participating in and being measured in the exaction by its enjoyment of the service. That comes under the tonnage question. Perhaps it might be urged that it would come within the commerce, which is a vaguer clause; but they have been denounced, where they have been denounced, under the tonnage clause of the Constitution, and there a discrimination attempted has been discarded by this court,—that is to say, this court has held that the tonnage exaction was as much an exaction if it was laid on bottoms in the bulk as if it was measured by tons and in the ordinary phrase "tonnage tax" in name. So we do not intend to repeat any argument to the contrary here. This case here is to be decided on the question whether it is within the quarantine powers to institute and maintain a system of quarantine. And then it is made an important question, though I imagine that no such suggestion can find a permanent place before this court, that if that power exists as to the State, then, having that power, having that duty, and exercising them, they are entitled to use the ordinary methods which historically, nationally, and commercially have always been resorted to as the methods of maintaining and compensating the maintenance of the service. That is the question here.

I may say something here about a case that is not wholly separate from the question of internal health, and that is the Husen case, where, as your Honors will remember, the State of Missouri had passed a law intending to protect the live stock of that State from infection from ani-

mals that should be introduced into it. The State undertook to provide that during, I think, eight months, no such animal should be introduced from Texas or Mexico or the Indian Territory. The law was held to be unconstitutional, because it was in its essence and substance a commercial regulation; that its elements and circumstances of traffic in these animals was the presumptive and general force and value of the transaction, and of the operation framed and executed by the State of Missouri. And although there due reserve is expressed by this court, in regard to the value and necessity of protecting the domestic health under the regulations of States, yet that was the disposition of this case.

Your Honors will also remember that there is a statute of the public health now on the statute book, passed in 1879, but there is nothing whatever in that statute that has the least reference, even remotely or by any argument, to an encroachment upon the whole province of the health as within the dominion of the States. So, too, in the larger agitation on the subject of legislation by Congress, which sprang out of the great excitement and the great solicitudes connected with the yellow fever in 1878, or thereabouts, it all ended, even under that pressure, in the law not passing through Congress, by reason of the abstinence of the Federal Government from these interventions in what did belong to the States, and because, whatever inconveniences there might be, and however imperfect the protections of the community, of the population at large, against the invasion of the public health, under our system of partition between the Federal and the State authorities it was better to leave the subject where it was.

And now the question comes for your Honors to decide, whether an inspection of this statute and these exactions, and the methods under which they are disclosed by the law and under the application and consummation of all the exactions thus raised upon the mere and direct business

of maintaining the quarantine system, shows an attempt to invade any clause of the Constitution. Let us look now at what the true character of this legislation is.

In the first place, it is a legislation of the State of Louisiana applied to its great port, and only to that, so far as we have any subject of consideration here. Whatever its arrangements as to its coterminus States in the interior, whatever as to the regulation of the great river that flows through the middle of our country from the North to the Gulf, we have nothing to do with that. The question is whether Louisiana has done more than its right, more than its duty, and more than its authority in this actual legislation on the subject of domestic health and protection *ad extra* against its invasion. Now, we have one objection raised to this legislation, and that is, that it does not tax enough. It does not take precautions enough, it does not incur expenses enough, and it does not levy duties enough in regard to some parts of the health and of the commerce of that port. This is now a question that your Honors are to look at in that sense. If you find in these omissions, and in these exercises of authority, a discrimination that defeats or impugns some of the clauses of the Constitution, that is very well. It is not any answer, that in the wisdom of Louisiana it has apportioned its exactions upon some rule of distribution that may be questioned on that of absolute equality or of wise expediency. That is not a question that belongs to this court; it is not a question that belongs to a court in Louisiana, and it does not any more belong as a question to a court here, sitting under the Constitution of the United States. The question is whether the character of the transaction, the method and operation of it, are kept within the health province and quarantine, as one of its methods of health preservation; and looking upon it in that sense, you are to determine whether thus treated and thus interpreted there are nevertheless excesses in its operation as bearing upon what is

concerned and is to be protected here by the Constitution of the United States; and you are by your judgment to strike down what has been improvidently done, in order to conserve what ought to be upheld.

Adjourned.

WASHINGTON, D. C., *April* 27, 1886.

Mr. EVARTS resumed his argument, as follows:

If I am right, then, if the Court please, in thinking that the whole subject-matter and the whole province of quarantine, as connected with the conservation of health, belongs to the States, no concession is needed on the part of this court as to what, or not, it may do; for when the whole province belongs to the States they may do whatever properly concerns the matter within their discretion, as to the proper discharge of the administration, leaving it for this court to determine whether the methods of administration, whether the appliances and exactions, are in contravention of positive and universal propositions of the Constitution that bear on the matter, not because it belongs to commerce, or not because it does not belong to health, if its subject-matter places it there, but because there are general propositions as to *forms of burden* that are intolerable under the Constitution under whatever right or clear right of the States over the subject.

Chief Justice Marshall, as it seems to me, in a very few words, which will always occupy the attention of a court better than the words of counsel, covers, I think, this whole proposition of the absolute right of the States. The passages that relate to this subject in Gibbons and Ogden are found on pages 205 and 206 of the true report. I see the brief quotes from the condensed report, but the pages I have mentioned are the pages in Wheaton:

"Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal

commerce of a State, and those which respect turnpike roads, ferries, &c., are component parts of this mass. No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation."

And so in the most direct consideration given by this court to the subject of quarantine, Mr. Justice Davis, delivering the opinion of the court, seems to maintain wholly undisturbed the position of the Chief Justice in Gibbons and Ogden. Mr. Justice Davis says:

"The power to establish quarantine laws rests with the States, and has not been surrendered to the General Government, as settled in Gibbons and Ogden. The source of a power is an acknowledged right of the State to provide for the health of its people; and although this power when set in motion may in a greater or less degree affect commerce, yet the laws passed in the exercise of this power are not enacted for such an object. They are enacted for the sole purpose of preserving the public health; and if they unjustly affect commerce, Congress, under the power to regulate it, may control them."

Mr. Justice WOODS. What is that quotation from?

Mr. EVARTS. That is a quotation from the opinion in Peete *v.* Morgan, in 19 Wallace. I read from page 11 of our brief, and also from page 12:

"Of necessity they operate on vessels in commerce, and may produce delay or inconvenience, but they are still lawful when not opposed to any constitutional provision or any act of Congress on the subject. It is evident that the power to establish quarantine regulations cannot be executed without the State possesses the means to raise a revenue for their enforcement, but it is equally evident that the means used for this purpose must be of such a character as the restrictions imposed by the Federal Constitution upon the taxing powers of the States authorize. We are not called upon in this case to go into the general subject of the limitations imposed by these restrictions, because

the tax in question is manifestly outside the jurisdiction of the State to impose, as it is a 'duty on tonnage' within the meaning of the Constitution."

That was the situation disposed of in Peete and Morgan.

Now let me point out what seems to me a just discrimination between the discussions to which I have already, perhaps, adverted, but which I will more distinctly insist upon, in reference to the distinction between pilotage and the quarantine. Pilotage in its nature belongs to navigation and commerce, and nothing else. It is all *ab extra*. It has no relation whatever to domestic control or domestic interests. Therefore in partition between States and the Federal Government the subject-matter of pilotage goes with commerce, for there it belongs, and wholly there. It goes therefore within the head of the subject-matter of commerce, of which pilotage is but a part pertaining to the Federal Government; but *that* as in regard to some other subjects which pertain to it, may either by the Constitution be left concurrently with exercise of certain powers by the States, or may be left as one of those authorities which may be resorted to by Congress whenever the fitness of the situation may require, and whenever circumstances will permit Congress properly to handle and treat the subject. Therefore when you are discussing about pilotage, you are always to consider in this court that you are to determine whether, in the very nature of it, the expression of action by the States in the very matter shall by its own force encroach upon the general commerce power of the Constitution, which, to large intents and purposes, exerts itself, and exercises itself, or whether it belongs within the minor and subsidiary relations to commerce which may be left to be exercised by the States, unless Congress chooses by its authority to intervene. Congress for the most part has left pilotage, treating that as the more suitably administered by special circumstances of the home ports in the

different parts in the United States. But, in matters of quarantine, when we come here we are under no such necessity of drawing lines or making discriminations. We stand upon an authority and a power that the Constitution has left us, untouched, undisparaged. There has never yet been any application to the subject of quarantine except the mere question whether the manner and form of the levy for the support of quarantine contravened a positive line against that form of taxation being permitted to the States, whatever right they had over the subject otherwise—that is, the subject for which the tax was to be used—but that by the firm exclusion of the clause of the Constitution,—although it is a State matter, and wholly a State matter, although it has a right to support itself by burdens upon the subject, yet, in the manner and form of a burden, there has been a firm clause embedded in the Constitution that the State in no manner, with no result, and in no province of authority, shall resort to that form of taxation. That we can understand. That is the tonnage duty. An illustration of that may be shown in the Alabama Steamboat Cases. Although they have nothing to do with this specific subject, yet they show how this exclusion of a tonnage duty operates by its own law against its exercise by the State. In that case the steamboats belonged in Alabama. They plied entirely on the rivers within the domestic jurisdiction of Alabama alone. A tax was laid on them in the form admeasured by so much per ton admeasurement in the enrollment under the regulations of Congress. Very well. The steamboats were taxable in every form that was open to taxation; but when the taxation was levied in that form there came a discrimination to be made here. Shall the principal proposition that the taxation is at the disposition of Alabama be carried so far as to cover this form of levying and collecting a tax; or shall this rule of the Constitution about tonnage, which has no concern whatever with the right of limiting the manner

otherwise that these steamboats can be taxed by Alabama—that this rule must be construed not as circumstantial, and so to yield when the substance belongs to Alabama in taxation, or shall it be held as a principal proposition of the Constitution that under no form or cover can it be a measure of exaction open to a State; and the decision was against the Alabama taxation, and wholly upon that ground.

So, too, in the wharfage cases. There the subject-matter was within the control of Congress. It belonged to the use of the port—the right to enter the port. Certain exactions undertook to support wharfage and to repay the owners of wharves by exacting a duty on all vessels coming to the port. That was held unconstitutional. Other regulations adopted the measure of according to the wharfage compensation measured by tonnage. This court held that constitutional, because it was not a burden on commerce, nor a revenue from commerce, nor was it a tonnage burden in the sense in which the Constitution used it. Then applying the wharfage rate to the dimensions of the vessel using the accommodation became only circumstantial, and it was no more obnoxious to condemnation here than if it had been laid in any other form of taxation.

Let us look for a moment at these decisions. In Cannon *v.* New Orleans, Mr. Justice Miller, in substance, said:

"For use of wharves compensation may be exacted; but any burden for arriving and leaving port is a tonnage tax."

That is to say, the levy being on all vessels that came in and went out in order to support wharfage in general, that is obnoxious to the Constitution.

Chief Justice Chase, in the Port Warden case, in 6 Wallace, says: "Five dollars on every vessel is a tonnage tax." Why? It is a tonnage tax because it is laid upon all the vessels that come in and go out; and it does not cease to be

tonnage because it is laid on the bottom instead of by admeasuring and adjustment of tonnage.

In Peete *v.* Morgan Judge Davis says:

"To defray expenses of quarantine, States cannot impose a tonnage tax on vessels entering harbors in pursuit of commerce."

What was the law there? All vessels coming into the harbor were made the subject of tonnage duty in order to support quarantine, but without any reference to the exercise of any action whatever of the State or the authorities of the State respecting the vessel.

Mr. Justice BRADLEY. I think in that case the charge made was for visiting vessels.

Mr. EVARTS. No; not in Peete & Morgan.

Mr. Justice BRADLEY. That is my impression about it.

Mr. EVARTS. No; not at all. It was in terms, as I understand it, for all vessels coming in.

Mr. MCDONALD. For quarantine purposes?

Mr. EVARTS. Yes; that was the object of the imposition.

The Legislature of Texas, by an act of August 13, 1870, enacted that every vessel arriving at the quarantine station of any port on the coast of Texas should pay $5 for the first hundred tons and one-and-a-half cents for each additional ton.

Mr. Justice BRADLEY. Every vessel arriving at a quarantine station?

Mr. EVARTS. Yes, of any town on the coast of Texas.

Mr. Justice BRADLEY. The physician was there and collected it?

Mr. EVARTS. It is sufficiently shown, as I think, by the comments of Judge Davis, which I have read, that it appears the case turned upon the point as here stated.

Mr. Justice BRADLEY. The prohibition against collecting tonnage is in the act of Congress itself, specifically.

Mr. EVARTS. Yes; it has already been declared in my argument that that is so.

There are two other cases which require attention on this point: That if the subject and the authority exercised are not themselves in contravention of the clauses of the Constitution, it is not for the court to determine either that it is an excessive or an unreasonable exaction; that if the law and the authority pursued under the law adhere to the province and the methods that are not excluded by the Constitution, it is not a judicial question to reject and overrule the regulation and annul its exercise upon a consideration of its unreasonableness; that the remedy, if there be any in that regard, is to be exercised by the Government of the United States in protection of the tonnage clause or of the commerce clause, but that the court cannot determine that. Thus in the case of Turner *v.* Maryland, The Tobacco Inspection Case, 107 U. S., the opinion being given by Mr. Justice Blatchford, and in Transportation Company *v.* Parkersburg, in the same volume, page 691, where the opinion is given by Mr. Justice Bradley on the Wharfage Case, both, as I understand, take the point that when the province belongs to the State and the law adheres to the rightful authority, it is for Congress to curb any excess or unreasonableness by its denunciation. It is not for the court, it is for Congress.

There are two cases referred to by our learned opponents. One is Inman Steamship Co. *v.* Tinker, 94 U. S., 238. I took part in the argument for the successful party, and there is nothing there to interfere with our propositions. It had no relation to quarantine, and it came within the denunciation of being a tonnage duty for coming into the port, and not measured by service rendered. In the case of Guy *v.* Baltimore, in 100 U. S., 434, where Mr. Justice Harlan delivered the opinion of the court on the question of discrimination, which has been referred to by our learned opponents, on there being discrimination as to what vessels

they inspected and what they did not inspect, it will be seen that this is very wide from any application to the present case. That was a case where all vessels using the wharfage in Baltimore under an ordinance justified by the State of Maryland exacted proper fees—if you please, clearly fees that were not complained of, or could not be, under the Constitution; but there was no exaction of the fees from bottoms which carried the product of the State. Mr. Justice Harlan delivered the opinion there, citing all the authorities about discrimination between the States; but even here the Chief Justice dissented, saying:

"I cannot concur in this judgment. We have decided that the municipal corporation may collect reasonable compensation for the use of its improved public wharves and landing places. Such a charge is in no just sense a tax or a burden. The State of Maryland has seen fit to prohibit the city of Baltimore from making any such charge for landing the products of the State. That was all the State undertook to do. I am unable to bring my mind to the conclusion that the Constitution of the United States makes this the equivalent of a provision that all wharfage at public wharves belonging to the State shall be free, so long as the law as it now stands is enforced."

So that this case, both in the opinion of the court and the dissent of the Chief Justice, maintains my proposition that wharfage, when compensation is exacted for service performed, lays no burden at all; that it is a case of *quid pro quo*.

What are the suggestions about this system? On the face of this clause no complaint can be made of it:

"That the resident physician at the quarantine station on the Mississippi river shall require for every inspection and granting of certificate the following fees and charges."

This is not a levy on all vessels seeking the port. Large commercial approaches are not thus levied on. The question whether it is reasonable to charge a steamship $30 is

not a question which this court can consider. It is spoken of as an enormous exaction, and then by multiplication it is said that if the steamship came in every day in the year the charge would be $10,000. Of course, if there were three hundred visits of a ship, the charge would amount to $9,000; but then there would be the three hundred visits. It is not an enormous exaction to make if three hundred vessels come in. The charge is $30 for a steamship, and a steamship is—as the present uses are, and as a matter of fact these great steamships of Morgan's line are—of two, three, or more thousand tons.

They say all the merchants protest against the exaction. They always protest against everything. Not only the merchants, but all the other people of the United States protest against taxation if it falls upon them. Why not? That is their liberty and that is the protection of their rights. But when my learned friend goes to the extent of saying that this exaction threatens the commerce of New Orleans, I say the commerce is increasing. Can anyone say that Morgan's steamships come less frequently than if this $30 was not exacted? The voyage of a vessel is not to save that $30. It is to gain all the rest. It comes as often as its commerce and its profits indicate. So, too, with the ships. By the jetty system, it is said the approaches of the river are so much improved that a new commerce, so to speak, has sprung up. You cannot, therefore, make anything out, as a matter of fact, *in terrorem*, by this imposition.

As a matter of law, this court, like the court below, has no right to look upon it in that view. It is an exaction here for a service of a health officer as provided by the statute, and the whole of the proceeds of which go to maintain the quarantine service; and that means, if your Honors please, the daily and annual service, not compensation for the investments and the buildings and the exposures

and the reparation of buildings. It is the service that is here yielded; and now what is it applied to? They say it is not a service to each one of these vessels; in other words, that the particular vessel does not get then and there a *quid pro quo* for the charge, putting it upon the footing of the wharfage where it is no burden at all, and is considered as maintainable only because it is a *quid pro quo* in the particular case. But that is not our situation. The maintenance of the quarantine system and service belongs to the State and is exercised by the State. Now, it is suggested by our learned friends that there is no exception taken to that; that all that is provided to be done is within the proper authority of the State. The visitation is proper, the inspection is proper, the retardment of a vessel at any station where you choose to arrest it, outside the port or inside, at the quarantine station, or wherever it may be determined. All these interferences with the voyage are lawful and useful too. But that the State cannot derive from these instruments of commerce the means of discharging its duty and imposing upon commerce its share, it is a sufficient answer given by Mr. Justice Davis in the name of the court. If you have a right to maintain quarantine, if that belongs to the States, and if Congress does not interfere with it, why, as a matter of course, you have a right to use the ordinary methods which, although it is a subject-matter of commerce and navigation, belong to all nations who thus provide for quarantine.

Quarantine, inspection and health, although a guard against domestic pestilence that may be spread by introduction, are also and are primarily a protection of all the ships of commerce that lie at the wharves and are loading and unloading there. There is where the first attack of infection begins. There safety is covered by no conduct of the United States whatever. It has not lifted a finger to protect commerce in the ports against the introduction of infection. It has left it to the States not only to protect

the interior, but to protect the commerce of the nation inside of these ports, and the State adopts its own methods, and inspects every vessel that it predetermines is such an instrumentality or possible vehicle for spreading infection, as it desires to examine. It will not do to say that because the health of the State is protected, therefore the State shall pay it. The whole Mississippi valley is to be protected. The whole country in the East and in the North is to be protected, in New York, and in Baltimore and in Boston. Here mark the distinction between the tendency of this court to shorten and cripple, if you please, the power of taxation in the introduction of emigrants to this country at the ports. The introduction of emigrants is an introduction into the United States, and their dissemination through the interior is a matter of public interest and universal control, as they think. But here it is exactly the opposite. You draw here no partition between the burdens that New York or New Orleans imposes on quarantine questions and the burden it imposes on emigration, checking the introduction of the diffuse labor that the interior demands. There is no demand for a diffusion of infection in the Mississippi or in the valley or in the rest of this country. It is, then, a pure question whether this service that belongs to presenting the introduction, not into New Orleans, not into New York, not into Baltimore, but into the United States, of this pestilential diffusion—if the United States will not and cannot, and finds, as I think, adequate reasons for not undertaking these local regulations—it is not to be left free to the States; the General Government is not to curb, is not to cripple this power and this duty, that all the United States should participate in the advantage of. No. Can you divide this responsibility? When the rest of the country is invaded for want of adequate measures and adequate expenditures at the ports, to answer that the State is not bound to protect the whole United States by the domestic taxation on property within the

States is no answer. Commensurate with duty is this commensurate right. The power carries the means. For this reason the importation through the ports and the power to exact from commerce at large, thus falling within the purview of quarantine regulations, go together and this tax is thus properly levyable upon them.

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Supplemental Brief of Defendant.

Our original brief was written before having seen our adversary's. It, therefore, becomes necessary to present a supplemental one in order to lay the facts clearly and present the contention in its true light.

Plaintiff's brief throughout goes upon the assumption that quarantine fees collected at the passes of the Mississippi river are partially used for other than quarantine purposes, and that they are diverted to local sanitation in the city of New Orleans.

The answer is: 1st, that *by law* these constitute *a trust fund*, which must be exclusively used for quarantine purposes; and 2d, that, *as a fact*, borne out by the record, not only is this fund insufficient for quarantine purposes, but *other funds* realized from different sources have to be added to this trust fund in order to make ends meet.

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So that not a dollar of inspection and fumigation fees is used outside of quarantine operations.

Plaintiff's error in this respect results from a confusion as to the complex but distinct organization of the Board of Health of Louisiana.

It is not a City and State Board, but it is exclusively a State institution—a quasi-political corporation.

Originally its functions were limited to general quarantine purposes; but subsequently the sanitation of the port and city of New Orleans was placed under its administration. In order to provide ways and means the State offices of the recorder of marriages, births, and deaths was annexed to it, the president of the Board of Health being made *ex officio* recorder, but the whole emoluments being paid into its treasury. Other sources of revenue were provided; and, besides, the city of New Orleans, on the requisition of the Board of Health, was ordered by law to pay over to it an annual sum of money for local inspection purposes, besides detailing at her own expense police officers to be used by the Board of Health in the discharge of its duties.

Hence the provision in the statute for the return to the city of New Orleans *of the surplus of the city funds* left unexpended at the end of the fiscal year.

Hence the plaintiff's obvious error in stating that a portion of the quarantine fees found their way into the city treasury. We repeat that, *as a matter of fact*, this is not the case, while, *as a matter of law*, it is simply impossible, since these fees belong to a trust fund.

Plaintiff overlooks the fact that the quarantine system at the Mississippi passes is necessarily expensive, as shown by the record; that buildings have been erected at much cost, and that the requisite equipment of the hospitals at the quarantine grounds necessitate constantly recurring expenses; that a set of officers—physicians, nurses, &c.—must be constantly on hand. These, with other indispensable expenses, more than absorb the fees charged for fumigation and infection; so much so that, besides the sources of revenue above mentioned, the State of Louisiana made considerable appropriations in aid of the quarantine.

The statutes of Louisiana, in support of the foregoing observations, are quoted at pages 1–5 of our original brief.

Respectfully submitted.

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